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H2O Environmental, Inc. v. Proimtu MMI, LLC Clerk's Record Dckt. 44148

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IN THE SUPREME COURT OF THE STATE OF IDAHO

H2O ENVIRONMENTAL INC., an Idaho
Company,

Plaintiff-Appellant,

vs.

PROIMTU MMI, LLC, a Nevada
Company,

Defendant-Respondent.

Supreme Court Case No. 44148

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE TIMOTHY HANSEN

VAUGHN FISHER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

BRENOCH R. WIRTHLIN

ATTORNEY FOR RESPONDENT

LAS VEGAS, NEVADA

H2O Environmental Inc vs. Proimtu MMI LLC

Date	Code	User		Judge
4/7/2015	NCOC	CCMYERHK	New Case Filed - Other Claims	Timothy Hansen
	COMP	CCMYERHK	Complaint Filed	Timothy Hansen
	SMFI	CCMYERHK	Summons Filed	Timothy Hansen
5/11/2015	AFOS	CCGRANTR	Affidavit Of Service 5.1.15	Timothy Hansen
8/18/2015	NODF	CCGARCOS	Three Day Notice Of Intent To Take Default	Timothy Hansen
8/21/2015	NOAP	CCGRANTR	Notice of Special Appearance Pursuant to Idaho Rule of Civil Procedure 4(i) (Wirthlin for Proimtu MMI, LLC)	Timothy Hansen
	MOTN	CCGRANTR	Motion to Dismiss for Lack of Personal Jurisdiction	Timothy Hansen
	MEMO	CCGRANTR	Memorandum of Points and Authorities in Support of Motion	Timothy Hansen
10/7/2015	HRSC	DCOLSOMA	Hearing Scheduled (Status by Phone 10/27/2015 02:30 PM)	Timothy Hansen
10/19/2015	NOTC	TCLAFFSD	Notice of Change of Firm	Timothy Hansen
10/27/2015	CONT	DCOLSOMA	Continued (Status by Phone 10/29/2015 02:30 PM)	Timothy Hansen
11/6/2015	DCHH	CCNELSRF	Hearing result for Status by Phone scheduled on 10/29/2015 02:30 PM: District Court Hearing Held Court Reporter: none in chambers Number of Transcript Pages for this hearing estimated:	Timothy Hansen
	HRSC	CCNELSRF	Hearing Scheduled (Status by Phone 11/20/2015 04:00 PM)	Timothy Hansen
11/9/2015	MISC	CCNELSRF	Briefing Schedule	Timothy Hansen
11/13/2015	OPPO	CCLOWEAD	Plaintiff's Opposition to Defendant Proimtu's Motion to Dismiss	Timothy Hansen
	AFFD	CCLOWEAD	Affidavit of Edward Savre in Support of Plaintiff's Opposition to Defendant Proimtu's Motion to Dismiss	Timothy Hansen
11/20/2015	CONT	DCOLSOMA	Continued (Status by Phone 11/23/2015 02:15 PM)	Timothy Hansen
	REPL	TCLAFFSD	Defendant's Reply In Support Of Its Motion To Dismiss For Lack of Personal Jurisdiction	Timothy Hansen
11/23/2015	CONT	DCOLSOMA	Continued (Status by Phone 11/24/2015 01:30 PM)	Timothy Hansen
11/24/2015	HRHD	DCOLSOMA	Hearing result for Status by Phone scheduled on 11/24/2015 01:30 PM: Hearing Held - In Chambers	Timothy Hansen
	AFFD	CCJOHNLE	Affidavit of Gabriel Gonzalez in Support of Defendant's Reply in Support of its Motion to Dismiss for Lack of Personal Jurisdiction	Timothy Hansen
	NOTH	CCLOWEAD	Notice Of Hearing	Timothy Hansen
	HRSC	CCLOWEAD	Hearing Scheduled (Motion to Dismiss 02/01/2016 04:00 PM)	Timothy Hansen

H2O Environmental Inc vs. Proimtu MMI LLC

Date	Code	User	Judge
2/1/2016	DCHH	DCOLSOMA	Hearing result for Motion to Dismiss scheduled on 02/01/2016 04:00 PM: District Court Hearing Held Court Reporter: C. Oleseck Number of Transcript Pages for this hearing estimated: less than 100
2/12/2016	MEMO	DCMAXWKK	Memorandum Decision and Order
3/30/2016	JDMT	DCOLSOMA	Judgment
	CDIS	DCOLSOMA	Civil Disposition entered for: Proimtu MMI LLC, Defendant; H2O Environmental Inc, Plaintiff. Filing date: 3/30/2016
	STAT	DCOLSOMA	STATUS CHANGED: Closed
4/13/2016	MISC	CCHOLDKJ	Statement of Costs
4/29/2016	NOTA	CCBUTTAR	NOTICE OF APPEAL
	APSC	CCBUTTAR	Appealed To The Supreme Court
	MOTN	CCBUTTAR	Motion TO Disallow Defendant's Request For Costs
	MOTN	CCBUTTAR	Motion To Vacate Judgment And Request For Oral Argument
5/10/2016	NOTH	CCATKIFT	Notice Of Hearing
	HRSC	CCATKIFT	Hearing Scheduled (Motion 06/09/2016 03:30 PM) Plaintiff's Motion to Vacate Judgment and Motion to Disallow Defendant's request for Costs
5/11/2016	STAT	CCATKIFT	STATUS CHANGED: Closed pending clerk action

Vaughn Fisher, ISB No. 7624
Allison Blackman, ISB No. 8686
FISHER RAINEY HUDSON
950 W Bannock Street, Suite 630
Boise, ID 83702
vaughn@frhtriallawyers.com
allison@frhtriallawyers.com
Phone (208) 345 – 7000
Fax (208) 514 – 1900

Attorneys for Plaintiff

NO. _____
A.M. _____
FILED _____
P.M. _____

APR 07 2015

CHRISTOPHER D. RICH, Clerk
By HALEY MYERS
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

H2O ENVIRONMENTAL, INC., an
Idaho Company,

Plaintiff,

vs.

PROIMTU MMI, LLC, a Nevada
company,

Defendant.

Case No.: **CV OC 1505838**

COMPLAINT

COMES NOW the Plaintiff, H2O Environmental, Inc., by and through its counsel of record and complains and alleges as follows:

PARTIES

1. Plaintiff H2O Environmental, Inc. ("H2O") is a Nevada company located in the State of Idaho and registered to do business in Idaho with the Idaho Secretary of State.
2. Defendant Proimtu MMI, LLC ("Proimtu") is a Nevada company licensed to do business in the State of Nevada which may be served by delivery of the complaint and summons

to its registered agent, Fennemore Craig Jones Vargas, 300 S. Fourth Street, Suite 1400, Las Vegas, NV 89101.

3. Defendant Proimtu managed construction services at a solar-panel plant outside of Tonapah, Nevada on behalf of its general contractor TPR International ("TPR").

4. In approximately 2012, Defendant Proimtu entered into an oral contract with H2O, a company based in Idaho, to manage the hiring and employment of construction labor employees at the solar-panel plant outside of Tonapah, Nevada (hereinafter "Tonapah project.")

5. Defendant Proimtu made telephone calls to persons in Idaho for the purpose of entering into its oral contract with H2O for H2O to perform subcontracter services for Proimtu's Tonapah project.

6. Defendant Proimtu made telephone calls and sent email to persons in Idaho for the purpose of realizing pecuniary benefit pursuant to its contract with H2O.

7. Defendant Proimtu made telephone calls and sent emails to persons in Idaho for the purpose of accomplishing its business purposes pursuant to its contract with H2O.

8. Defendant Proimtu established minimum contacts with the State of Idaho for purposes of jurisdiction pursuant to the United States Constitution and federal law.

JURISDICTION and VENUE

9. The Court has personal jurisdiction over Defendant pursuant to Idaho's long-arm statute, Idaho Code §5-514(a).

10. Venue is proper in this Court pursuant to Idaho Code §5-404.

11. The amount in controversy exceeds the jurisdictional amount of ten thousand dollars (\$10,000).

GENERAL ALLEGATIONS

12. Defendant Proimtu provided H2O requirements for the hiring and employment of the construction laborers, which included providing H2O the employment classifications for the construction laborers.

13. Defendant Proimtu agreed to pay H2O all project costs, which obligated Proimtu's reimbursement of all employment costs for the construction laborers, including state and federal employment taxes.

14. In approximately 2014, the Department of Labor launched an investigation against Defendant Proimtu and determined that some of the employees hired for the Tonapah project were misclassified, including those construction laborers hired by H2O pursuant to its contract with Proimtu.

15. As a result of the Department of Labor's findings, H2O paid additional wages to the construction laborers, who had been misclassified by Proimtu, at the Tonapah project.

16. Because of the reclassification and its payment of additional wages to the construction laborers, H2O owed additional employment taxes.

17. H2O paid the additional employment taxes, and submitted an invoice to Defendant Proimtu dated July 1, 2014, in the amount of \$23,805.77 for reimbursement.

18. Defendant Proimtu has refused to pay the invoice to reimburse H2O for the additional employment tax.

COUNT I BREACH OF CONTRACT

19. H2O re-alleges and incorporates paragraphs 1-18 as if fully set forth herein.

20. H2O and Proimtu entered into an oral contract wherein the parties agreed that H2O would hire and employ construction laborers, as a subcontractor of Proimtu at the Tonapah

project, and in return for such consideration, Proimtu would reimburse H2O for all costs associated with those construction laborers including any and all employment taxes.

21. Proimtu has breached the contract by refusing to pay H2O the amount due for employment taxes after the reclassification of the laborers.

22. As a result of the Proimtu's breach, H2O has been damaged in the amount of \$23,805.77.

COUNT II UNJUST ENRICHMENT

23. H2O re-alleges and incorporates paragraphs 1-22 as if fully set forth herein.

24. H2O hired and employed construction laborers on behalf of Proimtu, and in doing so conferred a benefit upon Proimtu, for which Proimtu agreed to reimburse H2O for all costs associated with the hiring and employment of the construction laborers including any and all employment taxes.

25. Proimtu accepted H2O's hiring and employment services and appreciated the benefit of the full value of such hiring and employment services.

26. Proimtu paid H2O's costs associated with the hiring and employment of the construction laborers, however Proimtu has not paid H2O the costs of employment taxes for such construction laborers in an amount of \$23,805.77.

27. It is inequitable for Proimtu to accept the full benefit of H2O's services without an exchange of the full corresponding value for that benefit.

28. Because Proimtu has not reimbursed H2O for the employment taxes of \$23,805.77, Proimtu has been unjustly enriched in the amount \$23,805.77.

COUNT III
ATTORNEY'S FEES

29. H2O re-alleges and incorporates paragraphs 1-28 as if fully set forth herein.
30. H2O prays it be awarded attorney's fees pursuant to Idaho Code §§ 12-120 and 12-121.
31. In the event judgment is entered by default, reasonable attorney's fees are \$2,500.

Wherefore, the Plaintiff Prays:

- a) That judgment be entered against Proimtu for damages for breach of contract in the amount of \$23,805.77;
- b) That H2O be awarded pre-judgment and post-judgment interest;
- c) That H2O be awarded its costs and reasonable attorney's fees, which amount shall be \$2,500 if judgment be taken by default;
- d) That this Court award all other such relief that it deems equitable.

Dated this 7th day of April, 2014.

FISHER RAINEY HUDSON



Vaughn Fisher
Attorney for Plaintiff

RECEIVED

AUG 21 2015

Ada County Clerk

FENNEMORE CRAIG, P.C.
Brenoch R. Wirthlin
Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
Telephone: (702) 692-8000
Idaho State Bar No. 8044
Email: bwirthli@fclaw.com

Attorneys for Defendant
Proimtu MMI, LLC

NO. _____ FILED
A.M. _____ P.M. *328*

AUG 21 2015

CHRISTOPHER D. RICH, Clerk
By TENILLE GRANT
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF ADA

H2O ENVIRONMENTAL, INC., an Idaho
company,

Plaintiff,

v.

PROIMTU MMI, LLC, a Nevada company,

Defendant.

No. CV OC 1505838

**MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION**

Pursuant to Idaho Rule of Civil Procedure 12(b)(2), Defendant Proimtu MMI, LLC ("Proimtu") hereby moves to dismiss Plaintiff H2O Environmental, Inc.'s ("H2O") claims against it for lack of jurisdiction.

The dispute alleged in H2O's Complaint concerns two Nevada companies over consequences from an alleged oral contract to pay all employment costs, including employment taxes, for construction labor to be performed in Nevada by Nevada employees. Despite the fact that Nevada contacts predominate and Proimtu has no Idaho contacts, H2O filed suit in Idaho. Proimtu requests that this Court dismiss H2O's action for lack of personal jurisdiction. This

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION - 1

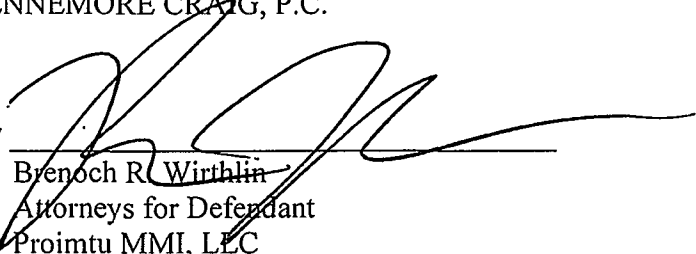
000009

Motion is supported by the contemporaneously filed Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss for Lack of Personal Jurisdiction.

RESPECTFULLY SUBMITTED this 20th day of August, 2015.

FENNEMORE CRAIG, P.C.

By



Brenoch R. Wirthlin
Attorneys for Defendant
Proimtu MMI, LLC

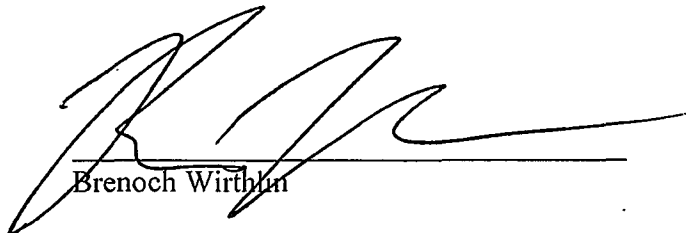
CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2015, I caused a copy of the foregoing **Motion to Dismiss for Lack of Personal Jurisdiction** to be served upon the following, in the manner indicated below:

Vaughn Fisher
Allison Blackman
Fisher Rainey Hudson
950 W. Bannock Street, Suite 630
Boise, ID 83702

() Via U.S. Mail
(X) Via Overnight Mail
() Via Hand Delivery
() Via Facsimile

Attorneys for Plaintiff



Brenoch Wirthlin

NO. _____
FILED
A.M. _____ P.M. *320*

AUG 21 2015

CHRISTOPHER D. RICH, Clerk
By TENILLE GRANT
DEPUTY

FENNEMORE CRAIG, P.C.
Brenoch R. Wirthlin
Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
Telephone: (702) 692-8000
Idaho State Bar No. 8044
Email: bwirthli@fclaw.com

Attorneys for Defendant
Proimtu MMI, LLC

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF ADA

H2O ENVIRONMENTAL, INC., an Idaho
company,

Plaintiff,

v.

PROIMTU MMI, LLC, a Nevada company,

Defendant.

No. CV OC 1505838

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION**

Defendant Proimtu MMI, LLC ("Proimtu"), by and through its counsel of record making a special appearance, Fennemore Craig P.C., submits the following memorandum in support of its Motion to Dismiss for lack of personal jurisdiction pursuant to Idaho Rule of Civil Procedure 12(b).

I. FACTUAL BACKGROUND

H2O and Proimtu are Nevada companies that provide construction labor. See Complaint ("Compl.") ¶¶ 1-3. H2O filed its original Articles of Incorporation in Nevada and is registered as a Nevada "domestic corporation." See H2O Environmental, Inc. Business Entity Information,

TH

Nevada Secretary of State: Barbara K. Cegavske, available at <http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=H2S%252fFjZeBDYhQdArbdD1VQ%253d%253d&nt7=0>.¹ H2O's registered agent is also located in Nevada. *Id.* Similarly, Proimtu is a "Nevada company licensed to do business in the State of Nevada." Compl. ¶ 2. To be clear, Proimtu does *not* maintain an office or have agents in Idaho.

According to H2O's Complaint, Proimtu made a series of telephone calls sometime in 2012 to enter into an oral contract with H2O to hire construction labor employees to help construct a solar-panel plant outside of Tonopah, Nevada (the "Tonopah Solar Project"). *Id.* ¶¶ 4–7. Proimtu allegedly provided H2O with detailed employment classifications for the construction labor employees. *Id.* ¶ 12. It also allegedly agreed to pay H2O "all project costs." *Id.* ¶ 13. According to H2O, this "obligated Proimtu's reimbursement of all employment costs for the construction laborers, including state and federal employment taxes." *Id.* Notably, however, H2O does not allege that Proimtu expressly contemplated paying state and federal employment taxes *for H2O employees*. *See id.* Instead, H2O avers that "Proimtu agreed to pay H2O all project costs, *which* obligated Proimtu's reimbursement of all employment costs." *Id.*

Two years later, the Department of Labor launched an investigation against several entities employing construction workers at the Tonopah Solar Project. *Id.* ¶ 14. The Department later determined that some of the construction workers were misclassified and, as a result, their salaries were not commensurate with the required salaries for workers on government projects. Some of those misclassified workers were workers hired by H2O. *Id.* As a result of the

¹ The insertion of the Nevada Secretary of State website does not turn the instant Motion to Dismiss into a motion for summary judgment because H2O affirmatively alleged it was a "Nevada corporation," Compl. ¶ 1, and as such, H2O's Complaint incorporates information contained in the website by reference. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

reclassification, H2O was required to pay additional wages and employment taxes to the construction laborers. *Id.* ¶¶ 15–16.

H2O paid \$23,805.77 in additional employment taxes.² *Id.* ¶ 17. Proimtu has refused to pay H2O's additional employment taxes. *Id.* ¶ 18. H2O subsequently filed suit in *Idaho*, despite the fact that the work contracted for took place in Tonopah, *Nevada* and Proimtu is a *Nevada* company.

II. BECAUSE IDAHO DOES NOT HAVE PERSONAL JURISDICTION OVER PROIMTU, DISMISSAL IS APPROPRIATE.

For an Idaho court to exercise personal jurisdiction over an out-of-state defendant, “two criteria must be met; the act giving rise to the cause of action must fall within the scope of [Idaho’s] long-arm statute and the constitutional standards of due process must be met.” *St. Alphonsus Reg’l Med. Ctr. v. State of Wash.*, 123 Idaho 739, 742, 852 P.2d 491, 494 (1993) (citations omitted). H2O bears the burden of demonstrating that jurisdiction is proper under both criteria. *See Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001); *Donaldson v. Donaldson*, 111 Idaho 951, 957, 729 P.2d 426, 432 (Idaho App. 1986).

Idaho’s long-arm statute, I.C. § 5-514, allows a broader application of personal jurisdiction than the federal Due Process Clause. *See Smalley v. Kaiser*, 130 Idaho 909, 913, 950 P.2d 1248, 1252 (1997) (finding that a defendant’s conduct did fall within Idaho’s long-arm statute, but that jurisdiction could not be exercised over the defendant under the Due Process Clause); *St. Alphonsus*, 123 Idaho at 744, 852 P.2d at 496 (same). As *Smalley* and *St. Alphonsus* make clear, because Idaho’s long arm-statute is broader than the Due Process Clause, this Court need only look to the Due Process Clause to determine whether personal jurisdiction over Proimtu is proper. *See Wells Cargo Inc. v. Transport Ins. Co.*, 676 F. Supp. 2d 1114, 1119 n.2

² H2O does not allege that this figure represents additional *wages* paid to its employees.

(D. Idaho 2009) (holding that *Smalley* and *St. Alphonsus* imply that Idaho's long-arm statute "reaches beyond the limits of due process, and that the Idaho Supreme Court must use the Due Process Clause to rein in the statute's grasp").³

Determining whether Idaho can exercise personal jurisdiction over Proimtu entails two inquiries. The first inquiry asks whether Proimtu purposefully availed itself of the privilege of conducting activities in Idaho, thus invoking the benefits and protections of its laws. *Schneider v. Sverdsten Logging Co.*, 104 Idaho 210, 212, 657 P.2d 1078, 1080 (1983) (quoting *Hansen v. Denckla*, 357 U.S. 235, 253 (1958)). The second inquiry asks whether Proimtu has certain minimum contacts with Idaho such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Id.* (quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)). The answer to both questions is no.

A. Proimtu did not purposefully avail itself of the privilege of conducting activities in Idaho.

The purposeful-availing inquiry is satisfied when "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being hauled into court there." *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)). "The extent of purposeful submission to the laws of the forum state necessary to satisfy this requirement, however, depends upon the nature of the activity giving rise to the suit." *Schwilling v. Horne*, 105 Idaho 294, 299, 669 P.2d 183, 188 (1983) (quoting *Jones Enters., Inc. v. Atlas Service Corp.*, 442 F.2d 1136, 1140 (9th Cir. 1971)).

³ Even if this Court were to examine the jurisdictional analysis under Idaho's long-arm statute, Proimtu would still not be subject to personal jurisdiction in Idaho. Assuming arguendo that Proimtu made a telephone call as H2O alleges, engaging in a single telephone call to negotiate a contract is insufficient to qualify as "transacting business" for purposes of Idaho's long-arm statute. See *Telford v. Smith Cnty. Tex.*, 155 Idaho 497, 314 P.3d 179 (2013) (finding nine telephone calls, two faxes, and six emails sent to Idaho by the defendants during the negotiation to be insufficient to confer Idaho jurisdiction).

H2O contends that the alleged oral contract with Proimtu is sufficient to haul Proimtu into an Idaho court because Proimtu made telephone calls and sent emails to H2O officers in Idaho. Compl. ¶¶ 5–7. However, this alleged jurisdictional basis was recently squarely rejected in *Walden v. Fiore*, 134 S. Ct. 1115, 1124–25 (2014). In *Walden*, the defendant approached, questioned, and searched the plaintiffs, who were Nevada residents, in an Atlanta airport, helped draft a false probable cause affidavit in Georgia, and forwarded that affidavit to a United States Attorney’s Office in Georgia to support a potential action for forfeiture of the seized funds. *Id.* at 1124. The Court of Appeals followed an analysis similar to the one relied upon by H2O “by shifting the analytical focus” away from the defendant’s contacts with the forum to his contacts with the plaintiffs. Rather than examining whether the defendant had contacts with Nevada, the Court of Appeals impermissibly looked to the defendant’s knowledge of the plaintiffs’ “strong forum connections.” *Id.* In reversing the Court of Appeals, the Supreme Court held that such an “approach to the ‘minimum contacts’ analysis impermissibly allows a plaintiff’s contacts with the defendant and forum to drive the jurisdictional analysis.” *Id.* at 1125. The Court noted:

[The defendant’s] actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections. Such reasoning improperly attributes a plaintiff’s forum connections to the defendant and makes those connections “decisive” in the jurisdictional analysis. It also obscures the reality that none of [the defendant’s] challenged conduct had anything to do with Nevada itself.

Id. (citations omitted). *Walden* further emphasized that “[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant’s conduct connects him to the forum in a meaningful way.” *Id.*

Since *Walden*, numerous courts have held that knowledge of a plaintiff’s residence in the forum is insufficient to constitute purposeful availment. *See, e.g., Rockwood Select Asset Fund XI (6)1, LLC v. Devine, Millimet & Branch*, 750 F.3d 1178, 1180 (10th Cir. 2014) (“*Walden*

teaches that personal jurisdiction cannot be based on interaction with a plaintiff known to bear a strong connection to the forum state.”); *Adv. Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014) (“The district court also thought personal jurisdiction proper because Real Action knew that Advanced Tactical was an Indiana company and could foresee that its misleading emails and sales would harm Advanced Tactical in Indiana. *Walden*, however, shows the error of this approach.”); *Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816, 823 (8th Cir. 2014) (holding that knowledge of a company’s state of residence “cannot create minimum contacts . . . because the plaintiff cannot be the only link between the defendant and the forum”); *see also Michael v. New Century Fin. Servs.*, No. 13-CV-03892-BLF, 2015 WL 1404939, at *5 (N.D. Cal. Mar. 30, 2015) (“A defendant who engages in out-of-state conduct that affects a resident of a forum state does not purposefully direct his conduct at the forum state *simply by virtue of his knowledge that plaintiff lives there.*” (emphasis added)).

Specifically courts have held that telephonic and email communications directed to a plaintiff in a particular forum do not amount to purposeful availment. *See Rupert v. Bond*, 68 F. Supp. 3d 1142, 1168 (N.D. Cal. 2014) (“Courts have been clear that the sending of a single email, or even a series of emails, by itself, does not amount to purposeful availment.”); *see, e.g., Barrett v. Catacombs Press*, 44 F. Supp. 2d 717, 729 (E.D. Pa. 1999) (finding that two emails sent from a defendant to a plaintiff resident in the forum “d[id] not show purposeful availment”); *Machulsky v. Hall*, 210 F. Supp. 2d 531, 542 (D.N.J. 2002) (holding that “minimal correspondence” via email “does not constitute sufficient minimum contacts” for purposes of personal jurisdiction); *Aaron Ferer & Sons Co. v. Atlas Scrap Iron & Metal Co.*, 558 F.2d 450, 455 (8th Cir. 1977) (“The letters and telephone calls in this purely commercial setting did not supply the necessary minimal contact.”); *see also Adv. Tactical Ordnance Sys., LLC*, 751 F.3d at

802–03 (holding that “[t]he connection between the place where an email is opened and a lawsuit is entirely fortuitous,” and that “as a practical matter, email does not exist in any location at all”).

Under *Walden* and its progeny, the purposeful-availment inquiry is focused on contacts between the defendant and the forum state, not between the defendant and the plaintiff. Consequently, H2O’s jurisdictional basis that “Defendant Proimtu made telephone calls *to persons in Idaho* for the purpose of entering into its oral contract with H2O,” Compl. ¶ 5, fails to satisfy the purposeful-availment inquiry under the Due Process Clause.

In any event, “a contract alone does not automatically establish minimum contacts in the plaintiff’s home forum.” *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) (quoting *Boschetto v. Hansing*, 539 F.3d 1011, 1017 (9th Cir. 2008)); accord *Doe*, 248 F.3d at 924 (“[A]n individual’s contract with an out-of-state party alone cannot automatically establish sufficient minimum contacts’ to support personal jurisdiction.”). Moreover, a “lone transaction” is generally insufficient to establish the requisite minimum contacts. See *Boschetto*, 539 F.2d at 1017 (holding that “lone transaction” was “insufficient to have created a substantial connection with California” sufficient to haul the defendants into a California court). A “lone transaction” is generally insufficient because minimum contacts suggest “ongoing obligations,” “continuing commitments,” or “substantial business.” *Id.* (holding that personal jurisdiction in California was improper because the defendants “did not create any ongoing obligations” with the plaintiff in California, the plaintiff did not point to any “continuing commitments” assumed by the defendants, “[n]or did the performance of the contract require the [d]efendants to engage in substantial business in California”).

Given the “limited nature of the transaction at issue,” the “substantial connection” between Proimtu and Idaho is lacking. *Picot*, 780 F.3d at 1213. To the extent Proimtu contacted

H2O's officers, such contact was related to "broader efforts" to obtain construction employees employed by a *Nevada* company (H2O) *in Nevada* for a *Nevada* project. *Id.* At best, Proimtu's alleged "contacts" with Idaho (i.e., telephonic and electronic communications) were merely "random, fortuitous, or attenuated." *Id.* (holding that the defendant's oral agreement with a California company "did not create sufficient minimum contacts to subject him to personal jurisdiction there"); *see also Boschetto*, 539 F.3d at 1019 (holding that the medium used to contact a contracting party "does not determine whether the nature and quality of [the defendant's] contacts serve to support jurisdiction").

B. Subjecting Proimtu to Idaho jurisdiction would not comport with traditional notions of fair play and substantial justice.

Even assuming Proimtu had purposefully availed itself to Idaho jurisdiction, exercising personal jurisdiction over Proimtu must comport with "traditional notions of fair play and substantial justice." *Smalley*, 130 Idaho at 913, 950 P.2d at 1252. This determination entails considering: (1) the burden on the defendant, (2) the forum State's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several States in furthering fundamental substantive social policies. *Id.*; *see also CE Distrib., LLC v. New Sensor Corp.*, 380 F.3d 1107, 1112) (9th Cir. 2004) (additionally considering "the extent of the defendants' purposeful interjection into the forum state's affairs" and "the existence of an alternative forum").

However, a calculated analysis of the foregoing factors is unnecessary here as it distracts from the simple fact that there is a dispute between two *Nevada* companies involving the salaries of *Nevada* construction workers who had worked on a solar plant in *Nevada*. *See Aaron Ferer & Sons Co.*, 558 F.2d at 455 (holding that exercising personal jurisdiction over the defendant would

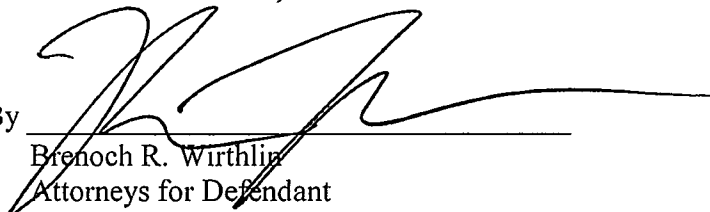
offend traditional notions of fair play and substantial justice in part because the “contracts at issue here were not to be performed in any part” within the forum state and thus have “no substantial connection” to the forum state). Although H2O’s Complaint appears to mitigate the common “Nevada” thread that binds the domicile of the parties (Nevada), the alleged substance of the contract (obtain Nevada workers), and the place of contractual performance (Nevada), the Nevada theme that resonates throughout this entire dispute cannot be overstated. Although H2O may find it more convenient to litigate this matter in Idaho because its officers reside in Idaho, such “convenience . . . is not determinative.” *Id.* Fair play and substantial justice warrants having the dispute litigated in Nevada where the parties and the center of the dispute are located.

III. CONCLUSION

Because Proimtu’s alleged telephonic and electronic communications to H2O officers, who just happened to live in Idaho, do not constitute sufficient minimum contacts necessary to satisfy the Due Process Clause, Proimtu requests that this Court dismiss the Complaint so that H2O can refile in the proper jurisdiction: Nevada.

RESPECTFULLY SUBMITTED this 20th day of August, 2015.

FENNEMORE CRAIG, P.C.

By 
Brenoch R. Wirthlin
Attorneys for Defendant
Proimtu MMI, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2015, I caused a copy of the foregoing

Memorandum in Support of Defendant's Motion to Dismiss for Lack of Personal

Jurisdiction to be served upon the following, in the manner indicated below:

Vaughn Fisher
Allison Blackman
Fisher Rainey Hudson
950 W. Bannock Street, Suite 630
Boise, ID 83702

() Via U.S. Mail
(X) Via Overnight Mail
() Via Hand Delivery
() Via Facsimile

Attorneys for Plaintiff



Brenoch Wirthlin

NO. _____
A.M. _____ FILED P.M. 4:22

NOV 13 2015

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Vaughn Fisher, ISB No. 7624
Allison Blackman, ISB No. 8686
FISHER RAINEY HUDSON
950 W Bannock Street, Suite 630
Boise, ID 83702
vaughn@frhtriallawyers.com
allison@frhtriallawyers.com
Phone (208) 345 – 7000
Fax (208) 514 – 1900

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

H2O ENVIRONMENTAL, INC., a
Nevada Company,

Plaintiff,

vs.

PROIMTU MMI, LLC, a Nevada
company,

Defendant.

Case No.: CV OC 1505838

**PLAINTIFF'S OPPOSITION TO
DEFENDANT PROIMTU'S MOTION TO
DISMISS**

COMES NOW the Plaintiff, H2O Environmental, Inc., by and through its counsel of record, FISHER RAINEY HUDSON, and submits the following Response to Defendant Proimtu MMI, LLC's ("Proimtu") motion to dismiss.

INTRODUCTION

This case stems from an agreement for Plaintiff H2O Environment, Inc. ("H2O") to process hiring and payroll on behalf of Defendant Proimtu from H2O's headquarters in Boise, Idaho. Proimtu contacted and entered into a contract with H2O in Boise for H2O to screen and

PLAINTIFF'S OPPOSITION TO DEFENDANT PROIMTU'S MOTION TO DISMISS

ORIGINAL

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hire employees that Proimtu wanted to hire for its Tonapah, Nevada solar panel project. Proimtu further hired H2O to process payroll and government reporting from its Boise headquarters for the Tonapah employees during a twenty-eight (28) week period in 2012 and 2013. All payments to the Tonapah employees were made from H2O's Boise-based bank branch and all payments made by Proimtu were sent to Boise. When Proimtu chose not to make the final payment, Proimtu should have reasonably expected to be haled into court in Idaho and this Court has jurisdiction to adjudicate this matter.

BACKGROUND

H2O is a Nevada company, registered to do business in Idaho and headquartered in Boise, Idaho. Affidavit of Edward Savre in Support of Plaintiff's Opposition to Defendant Proimtu's Motion ("Savre Aff.") ¶ 3. Upon information and belief, Proimtu is a Nevada company that managed construction services on behalf of its general contractor TRP International ("TRP") at a solar-panel plant outside of Tonapah, Nevada. In approximately November 2012, Proimtu and H2O entered into an oral contract wherein H2O agreed to manage the hiring, compensation, and Davis Bacon wage reporting of construction labor employees on behalf of Proimtu at the Tonapah solar-panel plant. Savre Aff. ¶ 4.

Proimtu initiated and performed this oral contract with H2O through its email and telephone contact with H2O's CEO and CFO, who were both located in Boise, Idaho. Savre Aff. ¶ 5. An email sent by Proimtu to H2O's CEO and CFO, in Boise, Idaho, evidences the contract between the parties (hereinafter "Tonapah contract"). Exhibit A, Savre Aff. ¶ 6. On approximately October 8, 2012, Proimtu, requested via an email to H2O's CEO in Boise that H2O provide Proimtu its W-9. Savre Aff. ¶ 7. CFO Ed Savre provided H2O's W-9 that specifically identified H2O's address as "6679 South Supply Way, Boise, ID 83716." Savre

Aff., ¶ 7, Ex. B. On the same date, CFO Savre also provided Proimtu with H2O's bank information located at "1205 S. Broadway Ave, Boise, ID 83706." Savre Aff. ¶ 12, Ex. C.

All of the services H2O provided to Proimtu for the Tonapah contract were provided from Boise, Idaho. Savre Aff. ¶ 9. For example, H2O conducted pre-employment screening of potential employees, selected by Proimtu, from Boise. Savre Aff. ¶ 10. H2O also completed the hiring process of the Tonapah employees, from Boise. Savre Aff. ¶ 11. Upon the Tonapah employees's hire, H2O provided their weekly paychecks, via direct deposit, from its Boise-based bank account. Savre Aff. ¶ 12. Finally, H2O completed the weekly Davis Bacon wage reporting from its Boise headquarters. Savre Aff. ¶ 13.

Without question, Proimtu knew that it had engaged H2O's headquarters in Boise to hire, compensate, and fulfill all employer reporting duties on its behalf. Throughout the duration of the Tonapah contract, Proimtu emailed CFO Savre, in Boise, weekly instructions regarding the Tonapah payroll. Savre Aff. ¶ 14., Ex. D. Then, the payroll was processed by H2O staff in Boise. Proimtu would also regularly mail to H2O in Boise, weekly reimbursement for H2O's Tonapah contract costs, including payroll. Savre Aff. ¶ 15, Ex. E. Those checks were deposited into H2O's Boise-based bank. Proimtu paid all of H2O's invoices for the Tonapah contract costs over the course of the approximate 28 weeks. Savre Aff. ¶ 16.

In May of 2013, the Department of Labor launched an investigation against Proimtu and determined that some of the employees hired on behalf of Proimtu for the Tonapah contract were misclassified. Savre Aff. ¶ 17. As a result of the Department of Labor's findings, Proimtu's general contractor, TRP, paid the additional back wages owed to the Tonapah contract employees. Savre Aff. ¶ 18. Due to TRP's additional payment of back wages, in 2014 the U.S. Department of Labor demanded H2O pay \$28,832.21 in additional employer taxes. Savre Aff. ¶

19; *see also*, Sarve Aff. ¶¶ 20-2, Exs. F, G, and H. Upon H2O's receipt of the first U.S. Department of Labor notice, and the subsequent bill from the IRS, H2O sent Proimtu an invoice for the additional Tonapah contract costs. Exhibit I, Savre Aff. ¶ 23. Throughout the summer of 2014, Proimtu refused to pay H2O's July 1, 2014 invoice for the employer taxes owed to the IRS. Savre Aff. ¶ 24.

To date, Proimtu has refused reimburse H2O for the additional Tonapah contract costs. H2O was forced to pay the IRS \$28,832.21 without any assurances of future reimbursement by Proimtu. Proimtu's failure to reimburse H2O is a violation of the Tonapah contract. And now Proimtu's filing of its current motion to dismiss is Proimtu's continued attempt to avoid its obligation and agreement to reimburse H2O under the parties' agreement.

ARGUMENT AND AUTHORITY

In a Rule 12(b)(2) motion to dismiss, the plaintiff bears the burden of proof to show that jurisdiction is appropriate and that the court has personal jurisdiction over the defendant. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001); *Nat'l Union Fire Ins. Co. v. Aerohawk Aviation, Inc.*, 259 F.Supp.2d 1096, 1101 (D. Idaho 2003). "[W]hen a district court acts on a defendant's motion to dismiss without holding an evidentiary hearing, the plaintiffs need make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss. That is, the plaintiff need only demonstrate facts that if true would support jurisdiction over the defendant." *Doe*, 248 F.3d at 922 (quoting *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995)) (citations omitted).

In order for an Idaho court to exercise jurisdiction over an out-of-state defendant, the plaintiff must demonstrate that the out-of-state defendant's actions fall within the scope of Idaho's long-arm statute and that exercising jurisdiction over the out-of-state defendant comports with the constitutional standards of the Due Process Clause of the U.S. Constitution. *St. Alphonsus Reg'l*

Med. Ctr. v. State of Washington, 123 Idaho 739, 742, 852 P.2d 491, 494 (1993); *see also*, *Schneider v. Sverdsten Logging Co.*, 104 Idaho 210, 211, 657 P.2d 1079, 1079 (1983). Because H2O can demonstrate that Proimtu's actions fall within the scope of Idaho's long-arm statute and that exercising specific personal jurisdiction over Proimtu comports with the due process clause, jurisdiction is proper in Idaho.

A. Proimtu's actions fall within the scope of Idaho's long-arm statute.

H2O has satisfied the first prong of the jurisdictional analysis because it has alleged facts and presented evidence demonstrating that Proimtu's contractual acts fall within the scope of Idaho's long-arm statute. Idaho's long-arm statute extends jurisdiction to "[t]he transaction of any business within this state." IDAHO CODE §5-514(a). This long-arm statute is remedial in nature and is intended to provide a forum for injured Idaho residents (*Doggett v. Electronics Corp.*, 93 Idaho 26, 30, 454 P.2d 63, 67 (1969)) and the Idaho Supreme Court has noted that the long arm statute should be construed liberally to effectuate its purpose (*Id.*; *see also*, *Blimka v. My Web Wholesaler, LLC*, 143 Idaho 723, 726, 152 P.3d 594, 597 (2007)). Accordingly, allegations that Proimtu transacted business in the state of Idaho satisfy the requirements of Idaho Code § 5-514. *Western States Equipment Co. v. American Amex, Inc.*, 125 Idaho 155, 157-158, 868 P.2d 483, 485-486 (1994); *Blimka*, 143 Idaho at 726, 152 P.3d at 597 (2007) (quoting *St. Alphonsus Reg'l Med. Ctr. State of Wash.*, 123 Idaho 739, 742, 852 P.2d 491, 494 (1993)). Evidence presented on a motion to dismiss for lack of jurisdiction must be viewed in the light most favorable to the non-moving party, and the non-moving party is entitled to all reasonable inferences which can be drawn from the facts presented. *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 74-74, 803 P.2 978, 980-81 (1990); *see also*, *St. Alphonsus*, 852 P.2d at 493.

1. Proimtu transacted business in Idaho.

H2O satisfies Idaho's long arm statute by presenting evidence that Proimtu transacted business in Idaho. A defendant is said to have transacted business in Idaho when it can be shown that such defendant has done "any act for the purpose of realizing pecuniary benefit or accomplishing or attempting to accomplish, transact or enhance the business purpose of objective or any part thereof of such person, firm, company, association or corporation." IDAHO CODE §5-514(a). Idaho Code §5-514 does not contain any requirement that the defendant be physically present in the state in order to fall within the scope of the long arm statute. In *Western States Equipment Co.*, the Idaho Supreme Court held that allegations that an out-of-state company transacted business in Idaho by (i) sending a credit application to Idaho and (ii) making several telephone calls to Idaho for purposes of negotiating the terms of the contract were sufficient to survive a motion to dismiss. 125 Idaho at 158, 868 P.2d at 486. Just as the allegations made and evidence presented in *Western States* were sufficient to survive a motion to dismiss, so too are H2O's present allegations and evidence of Proimtu's transacting business with H2O in Boise, Idaho.

Proimtu first solicited and negotiated its oral contract with H2O through phone calls and emails to H2O's CEO and CFO at H2O's headquarters in Boise, Idaho. Savre Aff. ¶¶ 5, 6. In Proimtu's email to H2O's CEO and CFO, on November 20, 2012, Proimtu advised: "Yes John we need you (sic) hire them workers for us and take care of their payroll and works(sic) comp, Marta is sending Ed all docs from the(sic) to do it. We will be sending to Ed all this(sic) guys hours weekly." Savre Aff. ¶ 6, Ex. A. Proimtu requested H2O to "hire workers" and "take care of their payroll" knowing that both functions would be performed by H2O at its headquarters in Boise. *Id.* Proimtu's email is also an admission of Proimtu's continuous and ongoing transaction of business

with H2O in Boise, as Proimtu admitted it would send H2O, in Boise, weekly information regarding employee hours. *Id.*

Nonetheless, Proimtu's November 20, 2012, email is not the only evidence of Proimtu's continuous transaction of business with H2O in Boise. Rather, throughout the duration of the Tonapah contract, Proimtu emailed CFO Savre, in Boise, weekly instructions regarding the Tonapah payroll, which was processed in Boise by H2O's staff. Savre Aff. ¶ 14., Ex. D. Proimtu would also regularly mail to H2O in Boise, weekly reimbursement for H2O's Tonapah contract costs, including payroll. Savre Aff. ¶ 15, Ex. E. In its memorandum supporting its motion to dismiss, Proimtu attempts to characterize its contact with H2O as a "single" or "lone" transaction. *See* Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss for Lack of Personal Jurisdiction at 7-8. However, Proimtu cannot characterize its ongoing transactions with H2O, in Boise, that spanned over the course of approximately 28 weeks as a random, single, or lone act. In this case, Proimtu made (at a minimum) weekly reports to Boise, from where H2O processed payroll and filed government reports for the Tonapah employees. Moreover, Proimtu sent weekly checks to Boise to be deposited into H2O's Boise-based bank branch— and Proimtu sent such checks atleast, and approximately 20 different times.

Where Proimtu, (1) knew that it had engaged H2O's headquarters in Boise, Idaho to process payroll and fulfill all employer reporting duties on its behalf from Boise, and (2) had continuous and ongoing transactions with H2O throughout the duration of the parties' contract in Boise— Proimtu falls within the scope of Idaho's long-arm statute and H2O has satisfied the first prong of the specific personal jurisdictional analysis.

B. Exercising jurisdiction over the out-of state defendant, Proimtu, comports with the constitutional standards of the Due Process Clause of the U.S. Constitution.

Not only do Proimtu's actions fall within Idaho's long arm statute, H2O has also alleged facts and presented evidence to show that it is consistent with due process for this Court to exercise specific jurisdiction over Proimtu. This Court's exercise of jurisdiction over Proimtu is consistent with this country's notion of due process so long as Proimtu's contacts with Idaho were sufficient enough that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co., v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 101-02 (1945). When a plaintiff asks a court to exercise specific jurisdiction over a defendant, the plaintiff must show that "(1) the nonresident defendant purposefully direct[ed] his activities or consummat[ed] some transaction with the forum or resident thereof [(i.e., minimum contacts)]...; (2) the claim arises out of or relates to the defendant's forum related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable. *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987).

1. Based on Proimtu's contacts with H2O in Idaho, Proimtu could reasonably anticipate being haled into court in Idaho.

Proimtu directed its communication and contacts towards Idaho, negotiated and entered into an oral contract with H2O's headquarters in Boise, sent weekly payroll reports to Boise to be processed in Boise, and sent money to H2O in Boise to cover the payroll, taxes and other obligations related to the Tonapah employees. Proimtu also directed H2O's Boise office on the hiring and prescreening of the Tonapah employees, all of which occurred in Boise.

A defendant has minimum contacts with the forum state if the defendant could "reasonably anticipate being haled into court" in the forum. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed. 2d 490, 501 (1980). When determining whether

specific jurisdiction is proper in a contract case, the Court must look to “dealings between the parties both prior to, and following, the execution of the contract...” *Western States*, 125 Idaho at 158, 868 P.2d at 486 (citing *Houglan Farms*, 119 Idaho at 78, 803 P.2d at 984). In *Western States*, the Idaho Supreme Court found that the plaintiff’s allegations that (i) defendant negotiated with plaintiffs’ general office in Idaho for lease of equipment (which was to be used outside the state of Idaho), (ii) defendant faxed a credit application to plaintiff in Idaho, and (iii) based on such credit application, defendant extended credit to plaintiff in Idaho were sufficient enough contracts that the defendant “could ‘reasonably anticipate being haled into Court’ in Idaho.” *Id.* (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Similar to the *Western States* defendant’s contacts with Idaho, Proimtu has had sufficient contacts with Idaho that it could reasonably anticipate being haled into court in Idaho.

Proimtu had continuous and ongoing contact with H2O in Boise, Idaho. Throughout the duration of the Tonapah contract, Proimtu emailed CFO Savre, in Boise, weekly instructions regarding the Tonapah payroll, which was processed by H2O in Boise. Savre Aff. ¶ 14., Ex. D. Proimtu also regularly mailed weekly reimbursement for H2O’s Tonapah contract costs, including payroll, to H2O in Boise, Idaho. Savre Aff. ¶ 15, Ex. E. For approximately 28 weeks, Proimtu regularly contacted H2O in Boise to ensure that H2O would provide payroll and reporting services (from Boise, Idaho) on Proimtu’s behalf. *See* Savre Aff. ¶¶ 4, 5, 14-16. Based on Proimtu’s “ongoing obligations” and “continuing commitments” with H2O in Boise, Proimtu could reasonably anticipate being haled to Court here in Idaho. Moreover, such consistent contact with H2O in Boise, through its weekly phone and email contact, and its sending of regularly payment for the Tonaphah contract costs to Boise, establishes Proimtu’s sufficient minimum contacts with Idaho.

2. Asserting personal jurisdiction over Proimtu comports with fair play and substantial justice.

Not only does Proimtu have sufficient minimum contacts with the state of Idaho for this Court to exercise specific personal jurisdiction over them, doing so comports with traditional notions of fair play and substantial justice, this Court may consider “(1) the burden on the defendant; (2) the forum State’s interest in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several State in furthering fundamental substantive social policies.” *Western States*, 125 Idaho at 158-159, 868 P.2d 486-487 (quoting *Burger King Co.*, 471 U.S. at 477, quoting *World-Wide Volkswagen*, 444 U.S. at 292).

Based on facts similar to those in the present case, Idaho courts have found that exercising jurisdiction over a non-resident defendant would be consistent with traditional notions of fair play and substantial justice. In *Western States*, which was a collections actions that involved contacts such as negotiating contract terms and exchanging contract documents, after noting that there would be little burden on the defendant to be haled into Idaho, that Idaho and the plaintiffs had an interest in having the case resolved in Idaho courts, and that resolving the case in Idaho would further the interests of the shared several states, the Court quickly, and somewhat summarily, concluded that the exercise of jurisdiction was appropriate. *Id.*

In this case, Proimtu has not specified any particular burden that would be placed upon them for having to defend this action in Idaho. After receiving H2O’s three day notice of intent to take default against Proimtu, Proimtu quickly retained counsel licensed in Idaho. Further, Idaho has a strong interest in providing a forum for its Idaho-based companies to seek contractual relief. This matter should be litigated here as Proimtu reached out to H2O’s headquarters in Idaho

to perform payroll and employer reporting functions on behalf of Proimtu which Proimtu knew would be conducted by H2O here in Boise. *See Savre Aff.* ¶¶ 9-13.

Proimtu incorrectly asserts in its supporting memorandum that a “calculated analysis” of the due process fairness factors is unnecessary because “the contracts at issue here were not to be performed in any part within the forum state.” *See Memorandum of Points and Authorities in Support of Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction* at 8-9. Indeed, all of the services H2O provided Proimtu under the Tonapah contract were provided from H2O’s headquarters in Boise, Idaho. *Savre Aff.* ¶ 9. H2O conducted pre-employment screening of potential Tonapah employees, selected by Defendant Proimtu, from Boise. *Savre Aff.* ¶ 10. H2O completed the hiring process of the Tonapah contract employees, from Boise. *Savre Aff.* ¶ 11. H2O provided the Tonapah contract employees weekly paychecks from its Boise-based bank account. *Savre Aff.* ¶ 12. And finally H2O completed the weekly Davis Bacon wage reporting from its Boise headquarters. *Savre Aff.* ¶ 13.

Over the course of the parties’ agreement, Proimtu sent regular payments to H2O in Boise, Idaho to reimburse H2O for the Tonapah employee payroll services which were performed in Boise. *Savre Aff.* ¶¶ 15, 16. Now, the matter at issue is Proimtu’s failure to make a final invoice payment to H2O in Boise for the final Tonapah payroll taxes. *Savre Aff.* ¶ 24. Fair play and substantial justice warrants having this dispute litigated in Idaho, where Defendant Proimtu directed its contacts, the services of the contract were performed, and ultimately where the center of the dispute is located. Because it comports with traditional notions of fair play and substantial justice for this Court to exercise jurisdiction over an out-of-state defendant, this Court should deny Proimtu’s motion to dismiss.

CONCLUSION

H2O has met its burden of demonstrating that Proimtu is subject to personal jurisdiction in Idaho. Plaintiffs have shown that Idaho's long-arm statute applied to Proimtu's ongoing transaction of business with H2O in Boise, Idaho. H2O has also shown the Proimtu has had sufficient minimum contacts with the forum that haling Proimtu into an Idaho court would comport with traditional notions of fair play and substantial justice. For these reasons, Plaintiff H2O respectfully requests that this Court deny Proimtu's motion to dismiss.

DATED this 13th day of November, 2015.

FISHER RAINEY HUDSON

By: 

Allison Blackman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of November 2015, I caused to be served a copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT PROIMTU'S MOTION TO DISMISS** on the following, in the manner indicated below:

Emily Ayn Ward
Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600
Phoenix, AZ 85016-3429
Fax: 602.916.5682

☒ Via U.S. Mail
☐ Via Overnight Mail
☐ Via Hand Delivery
☐ Via Facsimile

Attorneys for Defendant

Brenoch R. Wirthlin
Fennemore Craig, P.C.
Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
bwirthli@fclaw.com

☒ Via U.S. Mail
☐ Via Overnight Mail
☐ Via Hand Delivery
☒ Via Email

Attorneys for Defendant

FISHER RAINEY HUDSON



Allison Blackman
Attorneys for Plaintiff

Hudson
Miken
11/16/15
1229

NO. _____ FILED _____
A.M. _____ P.M. 4:22

NOV 13 2015

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Vaughn Fisher, ISB No. 7624
Allison Blackman, ISB No. 8686
FISHER RAINEY HUDSON
950 W Bannock Street, Suite 630
Boise, ID 83702
vaughn@frhtriallawyers.com
allison@frhtriallawyers.com
Phone (208) 345 – 7000
Fax (208) 514 – 1900

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H2O ENVIRONMENTAL, INC., a
Nevada Company,

Plaintiff,

vs.

PROIMTU MMI, LLC, a Nevada
company,

Defendant.

Case No.: CV OC 1505838

**AFFIDAVIT OF EDWARD SAVRE IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT
PROIMTU'S MOTION TO DISMISS**

STATE OF IDAHO)
) ss.
County of Ada)

Edward Savre, being first duly sworn, deposes and states as follows:

1. I am over eighteen years of age and competent to testify to the matters asserted herein.

**AFFIDAVIT OF EDWARD SAVRE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO
DEFENDANT PROIMTU'S MOTION TO DISMISS - 1**

ORIGINAL

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2. I have been employed as the Chief Financial Officer of Plaintiff H2O Environmental, Inc. at all relevant times and I have personal knowledge of the matters contained herein.

3. Plaintiff H2O Environmental, Inc. ("H2O") is a Nevada company, registered to do business in Idaho with the Secretary of State, and is headquartered in Boise, Idaho.

4. In approximately November 2012, Defendant Proimtu and H2O entered into an oral contract wherein H2O agreed to manage the hiring, compensation, and Davis Bacon wage reporting of construction labor employees on behalf of Defendant Proimtu at a solar-panel plant outside of Tonapah, Nevada (hereinafter "Tonapah project").

5. The oral contract between Defendant Proimtu and H2O was made through the exchange of phone calls and emails between Defendant Proimtu and H2O's CEO, John Bradley, and me, who were both located in Boise, Idaho.

6. A true and correct copy of Defendant Proimtu's email sent to me and H2O's CEO, in Boise, Idaho, evidencing Defendant Proimtu's and H2O's oral contract for the Tonapah project is attached hereto as **Exhibit A**.

7. A true and correct copy of my email to Defendant Proimtu responding to Proimtu's request for H2O's W-9, which was originally sent to CEO John Bradley in Boise, Idaho, and then forwarded to me for my response, is attached hereto as **Exhibit B**. Such W-9 evidences H2O's address as "6679 South Supply Way, Boise, ID 83716."

8. Defendant Proimtu and H2O agreed that Proimtu would reimburse H2O for all costs arising from H2O's hiring and compensation of the construction labor employees on behalf of Proimtu at the Tonapah project.

9. All of the services H2O provided to Defendant Proimtu for the Tonapah project,

pursuant to the parties' oral contract, were provided from Boise, Idaho.

10. H2O conducted pre-employment screening of potential employees, selected by Defendant Proimtu, from Boise, Idaho.

11. H2O completed the hiring process of the Tonapah project employees, from Boise, Idaho.

12. H2O provided the Tonapah project employees weekly paychecks, via direct deposit, from its Boise, Idaho bank account. A true and correct copy of my email to Defendant Proimtu with H2O's Boise, Idaho bank account information is attached hereto as **Exhibit C**.

13. H2O completed the weekly Davis Bacon wage reporting from its Boise, Idaho office.

14. Throughout the duration of the parties' oral contract, Defendant Proimtu would email me, in Boise, Idaho, instructions regarding payment for the Tonapah project employees' weekly hours. A true and correct copy of a sampling of Defendant Proimtu's emails to me, in Boise, Idaho, from approximately December 2012 through April 2013 are attached hereto as **Exhibit D**.

15. Throughout the duration of the parties' oral contract, Defendant Proimtu mailed to H2O in Boise, Idaho, weekly reimbursement for H2O's Tonapah project costs. A true and correct copy of Defendant Proimtu's email to me, in Boise, Idaho, is attached hereto as **Exhibit E**, and is an example of Proimtu mailing a check to H2O in Boise, Idaho, for reimbursement for Tonapah project costs.

16. Throughout the duration of the parties' oral contract, until approximately June 2013, Defendant Proimtu paid all of H2O's invoices for the Tonapah project costs.

17. In approximately May of 2013, the Department of Labor launched an investigation

against Defendant Proimtu and determined that some of the employees hired for the Tonapah project were misclassified, including those construction laborers H2O hired as a result of its oral contract with Proimtu.

18. As a result of the Department of Labor's findings, Defendant Proimtu's general contractor TRP, paid the additional back wages owed to the Tonapah project employees.

19. As a result of Tonapah project employees's reclassification and TRP's additional payment of back wages, in 2014 the U.S. Department of Labor demanded H2O pay \$28,832.21 in additional employer taxes.

20. A true and correct copy of the U.S. Department of Labor's April 18, 2014 notice to H2O demanding H2O pay \$23,805.77 to the IRS, is attached hereto as **Exhibit F**.

21. A true and correct copy of the U.S. Department of Labor's July 3, 2014 notice to H2O demanding H2O pay an additional \$4,943.21 to the IRS, is attached hereto as **Exhibit G**.

22. A true and correct copy of the U.S. Department of Labor's October 1, 2014 invoice to H2O demanding H2O pay yet an additional \$83.83 to the IRS, is attached hereto as **Exhibit H**.


23. Upon H2O's receipt of the first U.S. Department of Labor notice in approximately April 2014, and the subsequent bill from the IRS, H2O sent Defendant Proimtu an invoice for the additional Tonapah project costs. A true and correct copy of H2O's invoice to Defendant Proimtu for the costs of the additional employment taxes is attached hereto as **Exhibit I**.

24. Throughout the summer of 2014, Defendant Proimtu refused to pay H2O's July 1, 2014 invoice for the employer taxes owed to the IRS.

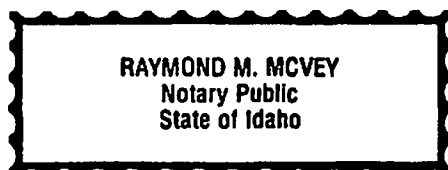
25. Because of Defendant Proimtu's refusal to pay the July 1, 2014 invoice, I did not send an updated invoice for the additional \$5,026.44 in employer taxes owed to the IRS.

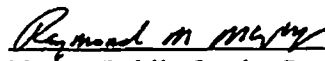
26. Further your affiant sayeth naught.

DATED this 12th day of November, 2015.


Edward Savre

SUBSCRIBED AND SWORN BEFORE ME this 12th day of November, 2015.




Notary Public for the State of Idaho
Residing at: Ada
Commission Expires: 12/28/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of November, 2015, I caused a true and correct copy of the foregoing **AFFIDAVIT OF EDWARD SAVRE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT PROIMTU'S MOTION TO DISMISS** to be served upon the following individuals in the manner indicated below:

Emily Ayn Ward
Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600
Phoenix, AZ 85016-3429
Fax: 602.916.5682

☒ Via U.S. Mail
☐ Via Overnight Mail
☐ Via Hand Delivery
☐ Via Facsimile

Attorneys for Defendant

Brenoch R. Wirthlin
Fennemore Craig, P.C.
Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
bwirthli@fclaw.com

☒ Via U.S. Mail
☐ Via Overnight Mail
☐ Via Hand Delivery
☒ Via Email

Attorneys for Defendant

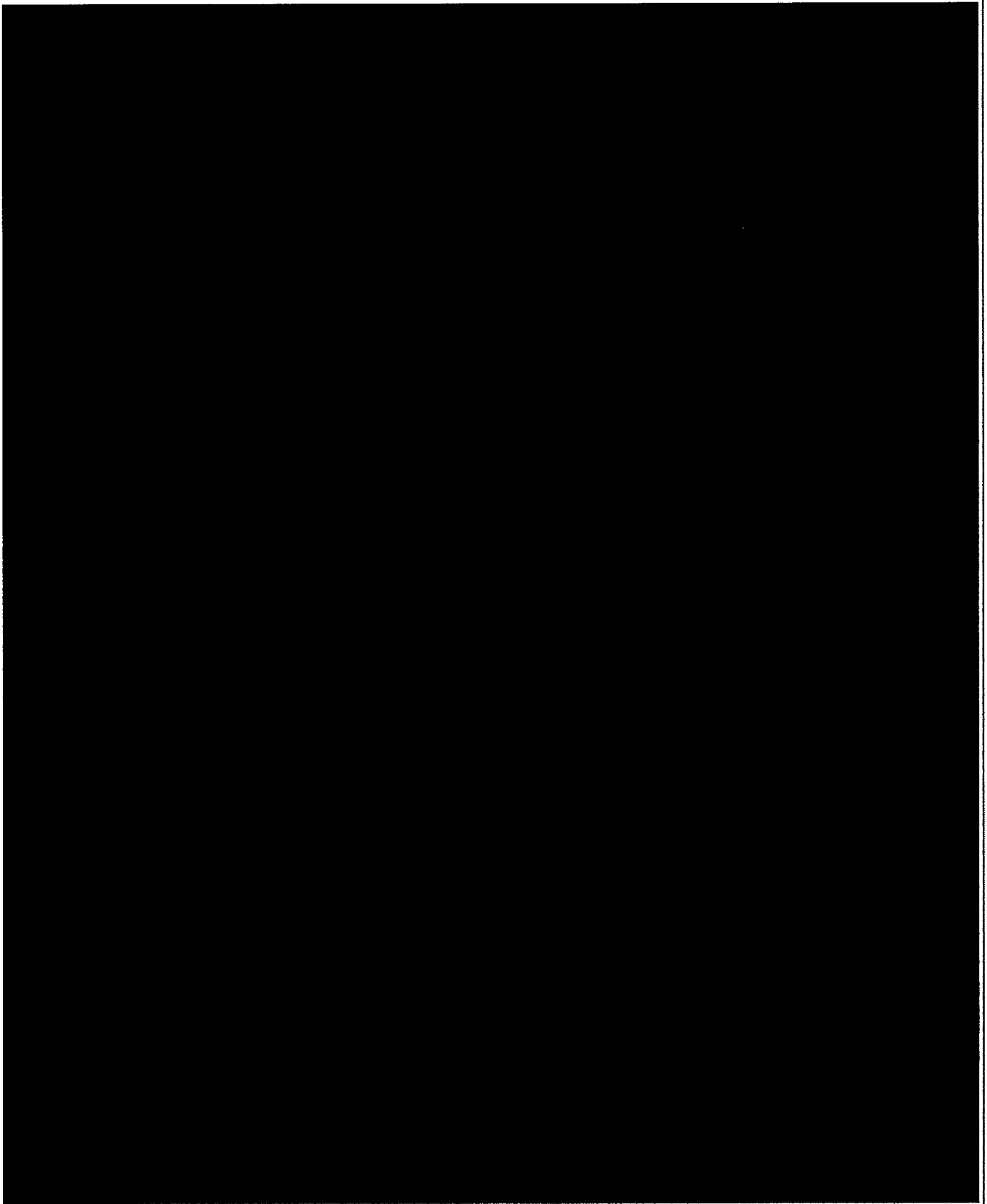
FISHER RAINEY HUDSON



Allison Blackman

Attorneys for Plaintiff

Exhibit A



From: Gabriel Gonzalez-Proimtu MMI LLC [mailto:ggonzalez@grupomara.com]
Sent: Friday, November 30, 2012 3:34 PM
To: John Bradley; Ed Savre; mrodriguez@grupomara.com
Subject: Re: Tonapah

Yes John we need you hire them workers for us and take care of their payroll and works comp, Marta is sending Ed all docs from the to do it. We will be sending to Ed all this guys hours weekly.
Hope to clarify something.
Tell Ed to let Marta knows what other docs you need to keep your records, tell him to set me on CC so I can follow up this.

Enviado desde mi HTC

----- Reply message -----

De: "John Bradley" <jbradley@h2oenvironmental.net>

Fecha: vie., nov. 30, 2012 2:12 p. m.

Asunto: Tonapah

Para: "Gabriel Gonzalez-Proimtu MMI LLC" <ggonzalez@grupomara.com>

CC: "Ed Savre" <esavre@h2oenvironmental.net>

Gabriel,

So does that mean we are starting Monday? And you need our help or not? I'm not clear? I'm also traveling to Reno myself now and will be in by 9:00 PM.

Sent from my iPhone

John Bradley

On Nov 30, 2012, at 2:35 PM, "Gabriel Gonzalez-Proimtu MMI LLC" <ggonzalez@grupomara.com> wrote:

John I got someone to solve them questions, driving to Reno try to do some more business, I will let you know.

Best

Enviado desde mi HTC

----- Reply message -----

De: "John Bradley" <jbradley@h2oenvironmental.net>

Fecha: vie., nov. 30, 2012 12:39 p. m.

Asunto: Tonapah

Para: "Gabriel Gonzalez - PROIMTU" <ggonzalez@grupomara.com>

CC: "Ed Savre" <esavre@h2oenvironmental.net>

Help Gabriel,

Sent from my iPhone

John Bradley

Begin forwarded message:

From: "Ed Savre" <esavre@h2oenvironmental.net>

Date: November 30, 2012, 1:29:11 PM MST

To: "John Bradley" <jbradley@h2oenvironmental.net>

Subject: FW: Tonapah

Hi John,

Who will be in charge of the Proimtu work in Tonapah? Will Kris still be the contact?

The attached file is what they just sent regarding the workers that Proimtu wants to put to work in Tonapah. I don't know what the agreement is yet. Are we paying the laborers directly, then billing Proimtu? Will the laborers be sending us a weekly timesheet? How much are we supposed to be paying

these guys? There are a lot of unanswered questions and they want to start this Monday.

Ed Savre, CPA

Chief Financial Officer

Exhibit B

Ed Savre

From: Edward Savre <esavre@h2oenvironmental.net>
Sent: Monday, October 08, 2012 11:57 AM
To: 'John Bradley'
Cc: 'Gabriel Gonzalez - PROIMTU'; NAIDU@AZCONSTRUCTIONRESOURCE.COM
Subject: H2O Company Info
Attachments: H2O W-9 Form.pdf; image001.png

Please see attached W-9.

Please let me know what else you need.

Thank you,

Ed Savre, CPA

Chief Financial Officer

h2o logo emf 1

6679 South Supply Way

Boise, ID 83716

Ph: 208-343-7867

Cell: (208) 859-8847

Fax: 208-322-2670

esavre@h2oenvironmental.net

www.h2oenvironmental.net

From: John Bradley [<mailto:jbradley@h2oenvironmental.net>]

Sent: Monday, October 08, 2012 11:41 AM

To: Ed Savre
Cc: Gabriel Gonzalez - PROIMTU
Subject: Fwd: Info

Ed please help us with this.

Thanks

Sent from my iPhone

John Bradley

Begin forwarded message:

From: Gabriel Gonzalez-Proimtu <ggonzalez@grupomara.com>
Date: October 8, 2012, 9:23:57 AM PDT
To: John Bradley <jbradley@h2oenvironmental.net>
Cc: "<NAIDU@AZCONSTRUCTIONRESOURCE.COM>"
<NAIDU@AZCONSTRUCTIONRESOURCE.COM>
Subject: Info

John,

Could you get someone to send your company information to the email on CC, they have to set up your company to start working tomorrow.

Thanks a lot

Recibe un cordial saludo

Gabriel González García

Manager

PROIMTU MMI LLC

Cell: +1 (602) 561 55 54

email: ggonzalez@grupomara.com

web: www.grupomara.com

Enviado desde mi iPhone

_____ Information from ESET NOD32 Antivirus, version of virus signature database 7560
(20121008) _____

The message was checked by ESET NOD32 Antivirus.

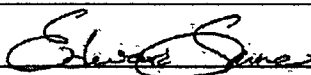
<http://www.eset.com>

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return) H2O Environmental, Inc.	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input checked="" type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) 6679 South Supply Way City, state, and ZIP code Boise, ID 83716	
List account number(s) here (optional)		
Requester's name and address (optional)		

Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3. Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.	Social security number [][]-[][]-[][][][][][] Employer identification number 88-0370785
--	---

Part II Certification Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below). Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.	Signature of U.S. person ▶  Date ▶ 10/3/2012
---	---

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

Exhibit C

Ed Savre

From: Edward Savre <esavre@h2oenviroental.net>
Sent: Monday, October 08, 2012 10:04 AM
To: 'John Bradley'; 'Gabriel Gonzalez - PROIMTU'
Subject: RE: Wire Transfer
Attachments: H2O Bank Info..pdf

Gabriel,

See attached bank information.

Ed Savre, CPA
Chief Financial Officer
H2O Environmental, Inc.

6679 South Supply Way
Boise, ID 83716
Ph: 208-343-7867
Cell: (208) 859-8847
Fax: 208-322-2670
esavre@h2oenviroental.net
www.h2oenviroental.net

-----Original Message-----

From: John Bradley [<mailto:jbradley@h2oenviroental.net>]
Sent: Sunday, October 07, 2012 7:15 PM
To: Ed Savre
Cc: Gabriel Gonzalez - PROIMTU
Subject: Wire Transfer

Hi Ed,

John Bradley
CEO
H2O Environmental Inc.

_____ Information from ESET NOD32 Antivirus, version of virus signature database 7559 (20121008) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

_____ Information from ESET NOD32 Antivirus, version of virus signature database 7560 (20121008) _____

ABENGOA SOLAR

Abengoa Solar Inc.


Flexible Payment Plan Enrollment Form

Upon your acceptance of Abengoa's Flexible Payment Plan Terms and Conditions (PPB-90/90), please complete and sign the following and return via e-mail or fax to:

Greg.Close@solar.abengoa.com

Fax (303) 233-2738

I, Edward Savre, CPA, CFO (name), as a representative of H2O Environmental, Inc., accept Abengoa Solar Inc's standard payment terms as outlined in the attached "Flexible Payment Plan Standard Terms and Conditions", which is incorporated by reference in this authorization. I hereby certify that I am authorized to execute this document for myself or my company.

Signature: 

(Authorized agent for the Company)

Name: Edward Savre, CPA, CFO

Title: Chief Financial Officer

Date: 10/3/2012

Supplier Information

Name	<u>(H2O Environmental, Inc.)</u>
Address 1	<u>(6679 S. Supply Way)</u>
Address 2	
City	<u>(Boise)</u>
State / Zip	<u>(ID, 83716)</u>
Tax ID #	<u>88-0370785</u>
Phone #	<u>208-343-7867</u>
Fax #	<u>208-322-2670</u>
Email	<u>esavre@h2oenviroental.net</u>
Fax #	
Email	

Bank Information

Name	<u>(Wells Fargo Bank)</u>
Address 1	<u>(1205 S. Broadway Ave.)</u>
Address 2	
City	<u>(Boise)</u>
State / Zip	<u>(ID, 83706)</u>
ABA Routing #	<u>321270742</u>
Account Number	<u>3394167633</u>
SWIFT Code	
Phone #	<u>208-424-5019</u>
Fax #	<u>208-433-5466</u>
Email	

Exhibit D

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Saturday, December 15, 2012 4:59 PM
To: Ed Savre
Cc: scarroll@h2oenvironmental.net
Subject: Hours week from 3 to 16 of Decembrer.
Attachments: Accounts numbers.pdf; Account Number Manuel Rodríguez.pdf

Importance: High

Hello Ed,

All hours that we are going to pay to the staff, will be 4 hours daily as Labour category and 4 hours daily as forklift operator category, from Monday to Friday

We will pay by transfer in account, but we will pay by check to Mosiés Sandoval, only, that you must send the check to his address *3400 Cabana Dr. Las Vegas, NV 89122*, or, to my *Po. Box 1308, Tonopah, NV. 89049*.

I attached the Account numbers of others.

Thanks,

MARTA RODRIGUEZ

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO

☎ 1 775 482 1905 📠 902215936

📧 mrodriguez@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Tuesday, February 05, 2013 10:21 AM
To: Ed Savre
Subject: Week 28 January-1 Febraury

Good mornin Ed,

I send you hours last week. There are workers who we have to pay some of the hours with the NV32. The price is 23.70 plus 1.25 of fringes. (SUNV2007-027 Common or General Laborer 09/19/2007.-). The rest, the price that we have applied so far.

NV16.

Ignacio Perez: 18 Labor.-18 operator

Samuel Gonzalez: 20 labor-20 operator.

Carlos Díaz: 20 labor.-20 operator.

Manuel Rodríguez: 20 labor.- 20 operator.

Víctor Landeros: 20 labor.- 20 operator.

Moisés Sandoval: 8 operator.

NV32.

Moisés Sandoval: 32 labor.

Ignacio Perez: 4 labor.

Remember the modifications that need to make to the paid hours the day 21th January.

Thanks,

MARTA RODRIGUEZ

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO

☎ 1 775 482 1905 📠 902215936

💻 mrodriguez@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Tuesday, February 12, 2013 9:32 AM
To: Ed Savre
Subject: Week 3-9 Febraury

Importance: High

Good morning Ed,
I send you the work of workers of last week.
All hours are with the always prices.

Names	1		2		3		4		5		6		7		8	
	L	O	L	O	L	O	L	O	L	O	L	O	L	O	L	O
Ignacio J. Perez							4	4	2	2	4	4	4	4	4	4
Jose Samuel Gonzalez							4	4	4	4	4	4	4	4	4	4
Carlos Diaz							4	4	4	4	4	4	4	4	4	4
Manuel Rodriguez							4	4	4	4	4	4	4	4	4	4
Victor Landeros							4	4	4	4	4	4	4	4	4	4
Moises Sandoral							4	4	4	4	4	4	4	4	4	4

If you have any question, please, contact me.
Thanks,

MARTA RODRIGUEZ

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO

☎ 1 775 482 1905 📠 902215936

✉ mrodriguez@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.

Timesheet
Week 10, 2-4-13 to 2-10-13

Nv16 labo0872-001 07/01/2009 (3A)
Nv16 Engi0012-002 10/01/12 (6)

Names	4		5		6		7		8	
	L	O	L	O	L	O	L	O	L	O
Ignacio J. Perez	4	4	2	2	4	4	4	4	4	4
Jose Samuel Gonzalez	4	4	4	4	4	4	4	4	4	4
Carlos Diaz	4	4	4	4	4	4	4	4	4	4
Manuel Rodriguez	4	4	4	4	4	4	4	4	4	4
Victor Landeros	4	4	4	4	4	4	4	4	4	4
Moises Sandoral	4	4	4	4	4	4	4	4	4	4

Totals	
L	O
18	18
20	20
20	20
20	20
20	20
20	20

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Tuesday, February 19, 2013 1:20 PM
To: 'Ed Savre'
Cc: 'Gabriel Gonzalez - PROIMTU'; 'John Bradley'
Subject: RE: H2O Invoice

Good morning Ed,
The actual hours of the workers for last week.

Thanks,

Nv16 lab00872-001 07/01/2009 \$19,78.
Nv16 Engi0012-002 10/01/12 \$38,92+21,22+3,50

NOMBRES Y APELLIDOS	11		12		13		14		15	
	L	O	L	O	L	O	L	O	L	O
Ignacio J. Perez	4	4	4	4						
Jose Samuel Gonzalez	4	4	4	4	4	4	4	4	4	4
Carlos Diaz	4	4	4	4	4	4	4	4	4	4
Manuel Rodriguez	0	0	0	0						
Victor Landeros	4	4	4	4	4	4	4	4	4	4
Moises Sandoral	4	3	3	3	4	4	4	4	4	4

NV32 sunv2007-027 09/19/2007 \$23,70+1,25.

NOMBRES Y APELLIDOS	11		12		13		14		15	
	L	O	L	O	L	O	L	O	L	O
Manuel Rodriguez	8	0	8	0						
Moises Sandoral	1	0	2	0						

Nv16 lab00872-001 07/01/2009 \$19,78.
Nv16 Engi0012-002 10/01/12 \$38,92+21,22+3,50

NOMBRES Y APELLIDOS	11		12		13		14		15	
	L	O	L	O	L	O	L	O	L	O
Ignacio J. Perez					6	2	7	1	7	1
Victor Landeros					4	4	4	4	4	4
Acero roberto					8	0	8	0	8	0
castillo jose					8	0	8	0	8	0
Jorge vazquez Ordoñez					8	0	8	0	8	0
julio borrero					8	0	8	0	8	0
Emerito Vazquez					8	0	8	0	8	0
Alejandro Vazquez					8	0	8	0	8	0

Juan Gordia					8	0	8	0	8	0
David Arkom					8	0	8	0	8	0

MARTA RODRIGUEZ

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO

☎ 1 775 482 1905 📠 902215936

✉ mrodriguez@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.

De: Ed Savre [mailto:esavre@h2oenvironmental.net]

Enviado el: martes, 19 de febrero de 2013 10:42

Para: 'Marta Rodriguez'

CC: 'Gabriel Gonzalez - PROIMTU'; John Bradley

Asunto: RE: H2O Invoice

Marta and Gabriel,

I have created the invoice for the estimate of the workers last week. I have attached it above. Please send me the actual hours of the workers for last week as soon as you can. I will adjust the invoice as needed.

Gabriel had delivered a check for \$40,000 to our office last night. I will apply this money to the estimate invoice and the remaining money will be advance for this weeks work.

We still need payment from you on the following 4 invoices:

008386776 - \$12,950.79 Work of Jan 28 to Feb 1
 008386938 - \$15,431.02 Work of Feb 4 to Feb 8
 008386940 - \$20,000.00 License Fee for February
 Solana invoice #008386510 - \$10,760.64 January work.

Thank you,

Ed Savre, CPA

Chief Financial Officer



Week 11 Timesheet
2-11-13 to 2-17-13

NV32 sunv2007-027 09/19/2007 LABORER										
NOMBRES Y APELLIDOS	11		12		13		14		15	
	L	O	L	O	L	O	L	O	L	O
Manuel Rodriguez	8	0	8	0						
Moises Sandoval	1	0	2	0						

Total	
L	O
16	0
3	0

Nv16 labo0872-001 07/01/2009 (3A)										
Nv16 Engi0012-002 10/01/12 (6)										
NOMBRES Y APELLIDOS	11		12		13		14		15	
	L	O	L	O	L	O	L	O	L	O
Ignacio J. Perez	4	4	4	4	6	2	7	1	7	1
Jose Samuel Gonzalez	4	4	4	4	4	4	4	4	4	4
Victor Landeros	4	4	4	4	4	4	4	4	4	4
Acero roberto					8	0	8	0	8	0
castillo jose					8	0	8	0	8	0
Jorge vazquez Ordoñez					8	0	8	0	8	0
julio borrero					8	0	8	0	8	0
Emerito Vazquez					8	0	8	0	8	0
Alejandro Vazquez					8	0	8	0	8	0
Juan Gordian					8	0	8	0	8	0
David Ankrom					8	0	8	0	8	0
Carlos Diaz	4	4	4	4	4	4	4	4	4	4
Moises Sandoval	4	3	3	3	4	4	4	4	4	4

28	12
20	20
20	20
24	0
24	0
24	0
24	0
24	0
24	0
24	0
24	0
20	20
19	18

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Monday, February 25, 2013 1:55 PM
To: Ed Savre
Subject: Week 20-22 Febraury

Importance: High

Good morning Ed,

NV32

NOMBRES Y APELLIDOS	19		20		21		22	
	L	O	L	O	L	O	L	O
Jorge Ordaz Vazquez	NV16	8	0	8	0	8	0	0
David Arkom	NV16		6	2	6	2		
Acero roberto	NV16		8	0	NV16			
castillo jose	NV16		8	0	baja			

Nv16

NOMBRES Y APELLIDOS	19		20		21		22	
	L	O	L	O	L	O	L	O
Ignacio J. Perez	8	0	6	2	8	0	4	4
Victor Landeros	4	4	4	4	4	4	4	4
Acero roberto	8	0	8	0	Nv32	8	0	
castillo jose	8	0	8	0	NV32			
Jorge Ordaz Vazquez	8	0	NV32					
julio borrero	8	0	8	0	8	0	0	0
Emerito Vazquez	8	0	8	0	8	0	0	0
jorge Vazquez	8	0	8	0	8	0	8	0
Juan Gordia	8	0	8	0	8	0	7	0
David Arkom/ carlos mendez	8	0	8	0	NV32			
Jose Samuel Gonzalez	4	4	4	4	4	5	4	4
Carlos Diaz	4	4	4	4	4	5	4	4
Manuel Rodriguez	4	4	4	4	4	5	4	4
Moises Sandoral	4	4	4	4	4	5	4	4

NV32. SUNV2007-013 08/09/2007 IRON WORKER, STRUCTURAL (\$30,10)

Juan Gordia	1
-------------	---

MARTA RODRIGUEZ

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO

☎ 1 775 482 1905 📠 902215936

💻 mrodriguez@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.

TIMESHEET
2/18/2013 - 2/24/2013

NV32 SUNV2007-027 09/19/2007 LABORER (\$23.70)

NV32 SUNV2007-027 09/19/2007 OPERATOR/LOADER (\$29.11)

Totals

	19		20		21		22	
	L	O	L	O	L	O	L	O
Jorge Ordaz Vazquez	NV16	8	0	8	0	8	0	0
David Ankom	NV16		6	2	6	2		
Acero roberto	NV16		8	0	NV16			
castillo jose	NV16		8	0	0	0		

L	O
24	0
12	4
8	
8	0

NV16 SUNV 2007-013 08/09/2007 LABORER (\$19.78)

NV16 ENGI0012-002 10/01/2012 (6) FORKLIFT OPERATOR (\$61.43)

	19		20		21		22	
	L	O	L	O	L	O	L	O
Ignacio J. Perez	8	0	6	2	8	0	4	4
Victor Landeros	4	4	4	4	4	4	4	4
Acero roberto	8	0	8	0	Nv32	8	0	
castillo jose	8	0	8	0	NV32			
Jorge Ordaz Vazquez	8	0	NV32					
julio borrero	8	0	8	0	8	0	0	0
Emerito Vazquez	8	0	8	0	8	0	0	0
jorge Vazquez	8	0	8	0	8	0	8	0
Juan Gordian	8	0	8	0	8	0	7	0
David Ankom	8	0	8	0	NV32			
Jose Samuel Gonzalez	4	4	4	4	4	5	4	4
Carlos Diaz	4	4	4	4	4	5	4	4
Manuel Rodriguez	4	4	4	4	4	5	4	4
Moises Sandoral	4	4	4	4	4	5	4	4

L	O
26	6
16	16
24	0
16	0
8	0
24	0
24	0
32	0
31	0
16	0
16	17
16	17
16	17
16	17

NV32 SUNV2007-013 08/09/2007 IRON WORKER, STRUCTURAL (\$30.10)

	19		20		21		22	
	L	O	L	O	L	O	L	O
Juan Gordian							1	

L	O
1	0

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Monday, March 04, 2013 4:39 PM
To: Ed Savre
Subject: Workers 25-01

Good morning Ed,

Roberto Acero will start tomorrow to work, and this the hours of the last week.
Thanks,

NV32

NOMBRES Y APELLIDOS	25		26		27		28		1	
	L	O	L	O	L	O	L	O	L	O
Jorge Ordaz Vazquez	8	0	8	0	8	0	8	0	8	0
David Arkom/ carlos mendez	4	4	4	4	4	4	4	4	4	4
Acero roberto	8	0	0	0	0	0	0	0	0	0
Juan Gordiaz	0	0	8	0	8	0	5	3	7	1
Jorge Vazquez	8	0	6	2	8	0	8	0	7	1

NV16

NOMBRES Y APELLIDOS	25		26		27		28		1	
	L	O	L	O	L	O	L	O	L	O
Ignacio J. Perez	4	4	0	0	0	0	0	0	0	0
Jose Samuel Gonzalez	4	4	4	4	4	4	4	4	4	4
Carlos Diaz	4	4	4	4	4	4	4	4	4	4
Manuel Rodriguez	4	4	4	4	4	4	4	4	4	4
Victor Landeros	4	4	4	4	4	4	5	4	4	4
Moises Sandoral	4	4	4	4	4	4	4	4	4	4

MARTA RODRIGUEZ

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

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✉ mrodriguez@grupomara.com

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Timesheet**February 25 to March 3, 2013****NV32 SUNV2007-027 09/19/2007 LABORER (\$23.70)****NV32 SUNV2007-027 09/19/2007 OPERATOR/LOADER (\$29.11)**

NOMBRES Y APELLIDOS	25		26		27		28		1	
	L	O	L	O	L	O	L	O	L	O
Jorge Ordaz Vazquez	8	-	8	-	8	-	8	-	8	-
David Ankrom	4	4	4	4	4	4	4	4	4	4
Acero roberto	8	-	-	-	-	-	-	-	-	-
Juan Gordiaz	-	-	8	-	8	-	5	3	7	1
Jorge Vazquez	8	-	6	2	8	-	8	-	7	1

Totals	
L	O
40	-
20	20
8	-
28	4
37	3

NV16 SUNV 2007-013 08/09/2007 LABORER (\$19.78)**NV16 ENGI0012-002 10/01/2012 (6) FORKLIFT OPERATOR (\$61.43)**

NOMBRES Y APELLIDOS	25		26		27		28		1	
	L	O	L	O	L	O	L	O	L	O
Ignacio J. Perez	4	4	-	-	-	-	-	-	-	-
Jose Samuel Gonzalez	4	4	4	4	4	4	4	4	4	4
Carlos Diaz	4	4	4	4	4	4	4	4	4	4
Manuel Rodriguez	4	4	4	4	4	4	4	4	4	4
Victor Landeros	4	4	4	4	4	4	5	4	4	4
Moises Sandoral	4	4	4	4	4	4	4	4	4	4

Totals	
L	O
4	4
20	20
20	20
20	20
21	20
20	20

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Monday, March 11, 2013 8:45 AM
To: Ed Savre
Cc: scarroll@h2oenvironmental.net
Subject: Workers week 4-10 march
Attachments: Partes de horas Marzo.xls

Good morning Ed,
I send you the hours of the last week.
Thanks.

MARTA RODRIGUEZ

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO

☎ 1 775 482 1905 📠 902215936

📧 mrodriguez@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.

proimtu PARTI MENSUAL HORAS PRODUCCIÓN NV16																							LOCALIDAD:				TONOPAH				FEBRERO		FEBRERO		FEBRERO																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																						
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Carlos Diaz					4	4	5	4	4	4	4	2	7																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												

YERDES	8	8
Boubacar Blyss	0	0
Adil Rokhsli	8	8
Antonio Ortiz	0	0
netno Garcia C	8	8
er Lozano Guin	0	0
Joan Carnice	0	0
Marquez Balles	0	0
d Gajete Ferna	8	8
uan Pablo Arao	0	0
Sergio pacheco	8	8
unkonko tanchas	0	0
rcisco muñoz al	0	0
rancisco Jimenez	0	0
Alexander Oden	0	0
pedro valerio	0	0
juan capacete	0	0
Alejandro Nieto	8	8
Juan R. moyano	8	8
antiago jodar flo	0	0
nuel Gonzalez	8	8
Alfoso luna	8	8
Luis Rodriguez	8	8
juan belido	8	8
id Balmaseda f	8	8

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Friday, March 15, 2013 8:26 PM
To: Ed Savre
Cc: scarroll@h2oenvironmental.net
Subject: Week 11-15 march
Attachments: Partes de horas Marzo.xls

Good afternoon Ed,
I send you the file.
Thanks.

MARTA RODRIGUEZ

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO


☎ 1 775 482 1905 📠 902215936

💻 mrodriguez@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.

<div><div>Labour comom or general/Truck Driver (NV 32-SUNV2007 09/19/2007)</div></div>																								LOCALIDAD:			0			0	0	0
																								OBRA:			6213			enaro-00	enaro-00	enaro-00
																														Total	Total	Total
NOMBRES Y APELLIDOS		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	1	20	31
Gabriel Mora		L	T	L	T	L	T	L	T	L	T	L	T	L	T	L	T	L	T	L	T	L	T	L	T	L	T	L	T	L	T	L

YERpes	8	8
Boubacar Bleye	0	0
Adil Rokhsai	8	8
Antonio Ortiz	0	0
metrio Garcia C	8	8
er Lozano Quir	0	0
Joan Camice	0	0
Marquez Balles	0	0
id Gajete Ferna	8	8
uan Pablo Arao	0	0
Sergio pachecc	8	8
antonio sanchas	0	0
hisco muñoz a	0	0
rancisco Jimen	0	0
Alexander Oden	0	0
pedro valerio	0	0
Juan capacete	0	0
Alejandro Nieto	8	8
Juan R. moyano	8	8
Intago Jodar flor	0	0
nuel Gonzalez	8	8
Alfoso luna	8	8
Luis Rodriguez	8	8
Juan bellido	8	8
yd Balmaseda f	8	8

Ed Savre

From: Marta Rodriguez - PROIMTU MMI <mrodriguez@grupomara.com>
Sent: Tuesday, March 26, 2013 1:19 PM
To: Ed Savre
Attachments: March Hours.xls

Here you go finally.

There are some OT hours. The guys that worked Saturday are OT as well as any that worked over 8 hours in a day.

Call me if you have any questions.

Shelley Estela

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO


☎ 1 775 482 1905 📠 902215936

✉ mrodriguez@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.

 <div>Labour comom or general/Truck Driver (NV 32-SUNV2007 09/19/2007)</div>																										LOCALIDAD:				0				MARCH	MARCH	MARCH																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
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YERpes	8	8
Boubecor Bleye	0	0
Adil Rokhssi	8	8
Antonio Ortiz	0	0
metno Garcia C	8	8
er Lozano Guir	0	0
Joan Carnice	0	0
Marquez Balles	0	0
d Gajete Ferna	8	8
uan Pablo Arac	0	0
Sergio pacheco	8	8
antonio sánchez	0	0
hisco Muñoz a	0	0
rancisco Jimena	0	0
Alexander Oden	0	0
pedro valerio	0	0
Juan capacele	0	0
Alejandro Nieto	8	8
Juan R. moyano	8	8
Intiago Jodar flor	0	0
nuel Gonzalez	8	8
Alfoso luna	8	8
uis Rodriguez	8	8
Juan belido	8	8
id Bakmaseda R	8	8

Ed Savre

From: Shelley Estela <sestela@grupomara.com>
Sent: Tuesday, April 02, 2013 1:17 PM
To: Ed Savre
Cc: 'Gabriel Gonzalez - PROIMTU'
Subject: Employee Hours for w/e 3/30/13
Attachments: March Hours.xls

Hi Ed,

Attached are the hours for w/e 3/30/13.

I will have the spreadsheet to Stacey for the New Hires on this list today.

Thank you,

Shelley Estela
Proimtu MMI, LLC

YERpes	8	8
Boubecor Beye	0	0
Adil Rokhssi	8	8
Anlorio Ortiz	0	0
Demetrio Garcia Cano	8	8
Javier Lozano Quintero	0	0
Joan Camice	0	0
Jose Marquez Ballesteros	0	0
David Gajete Fernandez	8	8
Juan Pablo Araoz	0	0
Sergio pacheco	8	8
antonio sanchez	0	0
francisco muñoz anza	0	0
Francisco Jimenez	0	0
Alexander Odena	0	0
pedro valeno	0	0
juan capacete	0	0
Alejandro Nieto	8	8
Juan R. moyano	8	8
Santiago yodar flores	0	0
Jose Manuel Gonzalez Berlanga	8	8
Alfoso luna	8	8
Jose Luis Rodriguez Pinelo	8	8
juan belido	8	8
David Balmaseda Ruiz	8	8

Ed Savre

From: Shelley Estela <sestela@grupomara.com>
Sent: Tuesday, April 09, 2013 2:09 PM
To: Ed Savre
Subject: PAYROLL W/E 4/7/13
Attachments: TIMESHEET WE 4-7-13.xlsx; EMPLOYEE LIST.xlsx

Hello Ed,

I am sorry this is so late however we had some changes to the time.

Attached are the timesheets for each location (you will need to click on tabs at bottom of worksheet).

Also, please note that there are now Labor, Operator, Mechanic (M), Electrician (E) and Truck Driver (TD). They are color coded for you and in bold. Please be sure to pay the correct rate.

All time is under NV32.

Also attached is a new employee spreadsheet showing the new employees. **Please note, I need you to please correct Vidal Solis Federal withholding**

Thank you,

Shelley Estela

Financial Controller

PROIMTU MMI LLC

GRUPO MARA

PROIMTU - PROIMTU MMI - PTA - PROIMCO

☎ 1 775 482 1905 📠 902215936

✉ sestela@grupomara.com

www.grupomara.com



Por favor, contribuya al cuidado del medio ambiente, no imprima este correo-e si no es necesario.



**CRESCENT DUNES THERMOSOLAR PLANT
WEEKLY TIMESHEET**

LOCATION: HELIOSTAT SOLAR FIELD

SHIFT: 1ST

W/E: 4/7/2013

EMP #	LAST NAME EMPLOYEE	FIRST NAME EMPLOYEE	4/1/2013		4/2/2013		4/3/2013		4/4/2013		4/5/2013			4/6/2013		4/7/2013		TOTAL HOURS			
			MON		TUES		WED		THURS		FRI			SAT		SUN					
			REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG TD	REG L	REG O	REG L	REG O	REG L	REG O	REG O	TOTAL REG
			OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT TD	OT L	OT O	OT L	OT O	OT L	OT O	OT O	TOTAL OT
2888	AKROM JR	DAVID		8		8		8		8		8						0	40	0	40
								2										0	0	0	0
7350	ARROYO	MIGUEL	8		8		8		8			8						32	8	0	40
							2		1									3	3	0	6
1866	AVILA	JUAN		8		8		8		8		8						0	40	0	40
																		0	0	0	0
-9968	CARDENAS	ALEJANDRO		8		8		8		8		8						0	40	0	40
																		0	0	0	0
6417	CORONA	OSWALDO	8		8								8					16	0	8	24
																		0	0	0	0
6461	ESCALERA	JORGE	8		8													16	0	0	16
																		0	0	0	0
6949	GONZALEZ	RAUL		8		8		8		8		8						0	40	0	40
																		0	0	0	0
0849	SANCHEZ	JOSE			8			8	8				8					16	8	8	32
																		0	0	0	0
0308	TENA	CESAR							8			8						8	8	0	16
																		0	0	0	0
1573	FAVELA	MARTIN										8						8	0	0	8
																		0	0	0	0
8289	MONTOYA	AARON										8						8	0	0	8
																		0	0	0	0
3309	WU	MICHAEL										8						8	0	0	8
																		0	0	0	0
TOTAL REG			24	32	32	32	8	40	24	32	24	48	16	0	0	0	0	112	184	16	312
TOTAL OT			0	0	0	0	2	2	1	0	0	0	0	0	0	0	0	3	3	0	6

000084

CRESCENT DUNES THERMOSOLAR PLANT
WEEKLY TIMESHEET



**CRESCENT DUNES THERMOSOLAR PLANT
WEEKLY TIMESHEET**

LOCATION: HELIOSTAT WAREHOUSE

SHIFT: 1ST

W/E: 4/7/2013

EMP #	LAST NAME EMPLOYEE	FIRST NAME EMPLOYEE	4/1/2013		4/2/2013		4/3/2013		4/4/2013			4/5/2013				4/6/2013		4/7/2013		TOTAL HOURS				
			MON		TUES		WED		THURS			FRI				SAT		SUN						
			REG L OT L	REG O OT O	REG L OT L	REG O OT O	REG L OT L	REG O OT O	REG L OT L	REG O OT O	REG M OT M	REG L OT L	REG O OT O	REG E OT E	REG M OT M	REG L OT L	REG O OT O	REG L OT L	REG O OT O	REG L OT L	REG O OT O	REG E OT E	REG M OT M	TOTAL REG TOTAL OT
1269	ALCAZAR	JOSE	8		8		8		6			8								38	0	0	0	38
																				0	0	0	0	0
6050	ANGUIANO	JUAN	8		8		8		6			8								38	0	0	0	38
																				0	0	0	0	0
0747	CARRION	PEDRO	0		0		8			6		8								16	6	0	0	22
																				0	0	0	0	0
4840	CHAPARRO	JORGE	8		0		0													8	0	0	0	8
																				0	0	0	0	0
1973	DECK	EMILY	8		8		8		6			8								38	0	0	0	38
																				0	0	0	0	0
0575	DIEZ	DAVID					8		8			8								24	0	0	0	24
																				0	0	0	0	0
4016	DURAN	FORTUNATO					8		6			1								15	0	0	0	15
																				0	0	0	0	0
1371	FARIAS	JOSE					8		0			0								8	0	0	0	8
																				0	0	0	0	0
3586	FAVELA	FREDDY	8		8															16	0	0	0	16
																				0	0	0	0	0
8954	GOMEZ	JOSE	8		8		8		6			8								38	0	0	0	38
																				0	0	0	0	0
7306	GONZALEZ	JULIAN					8		8			8								24	0	0	0	24
																				0	0	0	0	0
4312	GONZALEZ	MANUEL	2		0		0													2	0	0	0	2
																				0	0	0	0	0
9564	GUTIERREZ	CIRILO	8		8		8		6			4		4						34	0	4	0	38
																				0	0	0	0	0
9437	HERNANDEZ	BERMABEL	8		8		8		6			8								38	0	0	0	38
																				0	0	0	0	0
9433	HERNANDEZ	JESUS D.	8		8		8		6			8								38	0	0	0	38
																				0	0	0	0	0
2813	HERNANDEZ	PABLO	8		8		8		6			8								38	0	0	0	38
																				0	0	0	0	0
864	HERRERA	FILIBERTO					8		6			8								22	0	0	0	22
																				0	0	0	0	0
156	LARA	EDGAR	8		8		8		2		6	8								34	0	0	6	40
			3																	3	0	0	0	3

3314	LARA	PEDRO	8		8		8				4			4					36	0	0	4	40
																			0	0	0	0	0
4543	MARTINEZ	GUADALUPE	8		8		8		6		8								38	0	0	0	38
																			0	0	0	0	0
1976	MARTINEZ	HOGUER	8		8		8		6		8								38	0	0	0	38
																			0	0	0	0	0
4343	MARTINEZ	JESUS			8		8		6		8								30	0	0	0	30
																			0	0	0	0	0
2778	MATA	JESUS	8		8		8		6		8								38	0	0	0	38
																			0	0	0	0	0
0403	MC CLELEN	BILL					8		6		8								22	0	0	0	22
																			0	0	0	0	0
6654	MENDEZ	RAMON	8		8		8		6		8								38	0	0	0	38
																			0	0	0	0	0
8289	MONTOYA	AARON	8		8		0												16	0	0	0	16
																			0	0	0	0	0
5329	OROZCO	SALVADOR	8		8		8		6		8								38	0	0	0	38
																			0	0	0	0	0
3639	PAZ	LEOPOLDO			8		8		8		6			8					0	38	0	0	38
																			0	0	0	0	0
4617	PAZ	VALENTIN	8		8		8		6		8								38	0	0	0	38
																			0	0	0	0	0
5175	SALAZAR	ANGEL	8		8		8		6		4		4						34	0	4	0	38
			3																3	0	0	0	3
6495	SALAZAR	MIGUEL	8		8		8		6		8								38	0	0	0	38
																			0	0	0	0	0
6480	STEVENS	CASEY	3		0														3	0	0	0	3
																			0	0	0	0	0
0308	TENA	CESAR					8												8	0	0	0	8
																			0	0	0	0	0
3839	VIVAR	OMAR					8		6		8								22	0	0	0	22
																			0	0	0	0	0
3309	WU	MICHAEL	0		8		0												8	0	0	0	8
																			0	0	0	0	0
TOTAL REG			173	8	176	8	224	8	152	12	6	189	8	8	4	0	0	0	914	44	8	10	976
TOTAL OT			6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6	0	0	0	6

000087



**CRESCENT DUNES THERMOSOLAR PLANT
WEEKLY TIMESHEET**

LOCATION: HELIOSTAT WAREHOUSE

SHIFT: 2ND

W/E: 4/7/2013

			4/1/2013		4/2/2013		4/3/2013		4/4/2013		4/5/2013				4/6/2013		4/7/2013		TOTAL HOURS				
			MON		TUES		WED		THURS		FRI				SAT		SUN						
EMP #	LAST NAME EMPLOYEE	FIRST NAME EMPLOYEE	REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG E	REG M	REG L	REG O	REG L	REG O	REG L	REG O	REG E	REG M	TOTAL REG
			OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT E	OT M	OT L	OT O	OT L	OT O	OT L	OT O	OT E
4440	ACOSTA	FERNANDO			8		8		7		8								31	0	0	0	31
																		0	0	0	0	0	
6386	AGUAYO	SALVADOR			8		8		7		8								31	0	0	0	31
																		0	0	0	0	0	
5500	AGUILA	JUAN		8		8		8		7		8							0	39	0	0	39
				2															0	2	0	0	2
9647	ARCE	RAMON	8		8		8		7		8								39	0	0	0	39
											1								1	0	0	0	1
1866	AVILA	JUAN	0																0	0	0	0	0
			2																2	0	0	0	2
2962	CABRERA	MIGUEL	8		8		8		7		8								39	0	0	0	39
																			0	0	0	0	0
9995	CARDENAS	JESUS	0		8		8			5	8								24	5	0	0	29
																			0	0	0	0	0
4840	CHAPARRO	JORGE			8		8		7		4			4					27	0	0	4	31
																			0	0	0	0	0
5502	CHAVEZ	ABEL	8		8		8		7		8								39	0	0	0	39
																			0	0	0	0	0
2550	CHAVEZ	CARLOS	8		8		8		5		4		4						33	0	4	0	37
																			0	0	0	0	0
9434	CISNEROS	LUIS	8		8		8		7										31	0	0	0	31
																			0	0	0	0	0
9895	CORONA	CESAR			8		8		7		8								31	0	0	0	31
											1								1	0	0	0	1
5197	ESPARZA	COSME			8		8		7		8								31	0	0	0	31
											1								1	0	0	0	1
1573	FAVELA	MARGARITO	8		8		8		7		8								39	0	0	0	39
											1								1	0	0	0	1
6642	FLORES	ANGEL	8		8		8		7		8								39	0	0	0	39
											1								1	0	0	0	1
1553	GOMEZ	MARTIN			8		8		7										23	0	0	0	23
																			0	0	0	0	0
29159	IRIANDA	ROBERTO	8		8		8		7		8								39	0	0	0	39
											1								1	0	0	0	1
277	MALDONADO	EDUARDO	8		8		8		7		8								39	0	0	0	39
																			0	0	0	0	0

0352	MOJICA	JOSE	8		8		8		7		8							39	0	0	0	39
											1							1	0	0	0	1
0886	MORALES	ED	8		8		8		5		8							37	0	0	0	37
																		0	0	0	0	0
5472	OLIVAS	SERGIO	8		8		8		7		8							39	0	0	0	39
																		0	0	0	0	0
9816	PEREZ	LUIS	8		8		8		7		8							39	0	0	0	39
																		0	0	0	0	0
2184	RENTERIA	JESUS			8		8		7		8							31	0	0	0	31
																		0	0	0	0	0
4734	REYES	FELIX			8		8		7		8							31	0	0	0	31
											1							1	0	0	0	1
0285	RODRIGUEZ	CHRISTOPHER	8		8		8		7		8							39	0	0	0	39
											1							1	0	0	0	1
8470	RODRIGUEZ	LUIS			8		8		7		8							31	0	0	0	31
											1							1	0	0	0	1
7757	SAINZ	ALAIN	8		8		8		7		8							39	0	0	0	39
																		0	0	0	0	0
0849	SANCHEZ	JOSE	8															8	0	0	0	8
																		0	0	0	0	0
9886	SEGOVIA	PALICARPIO	8		8		8		7		8							39	0	0	0	39
																		0	0	0	0	0
3634	SERNA	VICTOR	8		8		8		7		8							39	0	0	0	39
											1							1	0	0	0	1
2631	ARZOLA	RICARDO					8		5									13	0	0	0	13
																		0	0	0	0	0
TOTAL REG			144	8	216	8	224	8	183	12	192	8	4	4	0	0	0	959	44	4	4	1011
TOTAL OT			2	2	0	0	0	0	0	0	11	0	0	0	0	0	0	13	2	0	0	15

680000



**CRESCENT DUNES THERMOSOLAR PLANT
WEEKLY TIMESHEET**

LOCATION: PEDESTAL SOLAR FIELD

SHIFT: 1ST

W/E: 4/7/2013

EMP #	LAST NAME EMPLOYEE	FIRST NAME EMPLOYEE	4/1/2013		4/2/2013		4/3/2013		4/4/2013		4/5/2013			4/6/2013		4/7/2013		TOTAL HOURS			
			MON		TUES		WED		THURS		FRI			SAT		SUN					
			REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG TD	REG L	REG O	REG L	REG O	REG L	REG O	REG TD	TOTAL REG
			OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT TD	OT L	OT O	OT L	OT O	OT L	OT O	OT TD	TOTAL OT
9047	COBIAN	JUAN	8		8		8		8		8							40	0	0	40
							2				2							4	0	0	4
6417	CORONA	OSWALDO							8									8	0	0	8
																		0	0	0	0
0760	CORRAL	OMAR	8		8		8		8		8							32	8	0	40
							2		1		2							3	2	0	5
2457	DIAZ	CARLOS		8		8		8		8		8						0	40	0	40
							2				2							0	4	0	4
4016	DURAN	FORTUNATO									7							7	0	0	7
											2							2	0	0	2
5910	ESCALERA	FRANCISCO	8		8													16	0	0	16
																		0	0	0	0
1450	ESCALERA	ROGELIO	8		8													16	0	0	16
																		0	0	0	0
1573	FAVELA	MARTIN					8		8									16	0	0	16
							2											2	0	0	2
4004	GUTIERREZ	OSCAR	8		8		8		8		8							40	0	0	40
							2				2							4	0	0	4
4632	LANDEROS	VICTOR		8		8		8		8		8						0	40	0	40
							2		1		2							0	5	0	5
4361	MENDEZ	CESAR			8		8		8		8							8	24	0	32
							2				2							0	4	0	4
8289	MONTOYA	AARON					8		8									16	0	0	16
							2											2	0	0	2
1805	VAZQUEZ/ORDAZ	JORGE	8		8		8		8				8					32	0	8	40
							2		1				2					3	0	2	5
5354	RUIZ-VIVAR	ERNESTO					8		8		8							24	0	0	24
							2				2							4	0	0	4
4711	VIZCARRA	GILBERTO	8				8		8				8					24	0	8	32
							2						2					2	0	2	4
3309	WU	MICHAEL					8		8									16	0	0	16
							2											2	0	0	2

TOTAL REG
TOTAL OT

56	16	56	16	72	24	80	24	31	32	16	0	0	0	0	295	112	16	423
0	0	0	0	18	6	2	1	8	8	4	0	0	0	0	28	15	4	47



**CRESCENT DUNES THERMOSOLAR PLANT
WEEKLY TIMESHEET**

LOCATION: PEDESTAL WAREHOUSE SHIFT: 1ST W/E: 4/7/2013

EMP #	LAST NAME EMPLOYEE	FIRST NAME EMPLOYEE	4/1/2013		4/2/2013		4/3/2013		4/4/2013		4/5/2013		4/6/2013		4/7/2013		TOTAL HOURS		
			MON		TUES		WED		THURS		FRI		SAT		SUN		REG L	REG O	TOTAL REG
			REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O	REG L	REG O			
			OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	OT L	OT O	TOTAL OT
8705	ACERO	ROBERTO		8		8		8		8		8					0	40	40
						2		2		2		2					0	8	8
6389	BARRERA	JULIO	8		8		8		8		8						40	0	40
					2		2		2		2						8	0	8
7811	CASTILLO	JOSE	8		8		8		8		8						40	0	40
					2		2		2		2						8	0	8
	CARRION	JULIO	8		8		8		8		8						40	0	40
					2		2		2		2						8	0	8
7538	CEJA	RAMON	8		8		8		8		8						40	0	40
					2		2		2		2						8	0	8
3132	DIAZ	VICTOR	8		8		8		8		8						40	0	40
					2		2		2		2						8	0	8
3586	FAVELA	FREDDY					8		8		8						24	0	24
							2		2		2						6	0	6
8805	FAVELA	JUAN	8		8		8		8		8						40	0	40
					2		2		2		2						8	0	8
6388	FAVELA	VALENTINE	8		8		8		8		8						40	0	40
					2		2		2		2						8	0	8
9482	GOMEZ	ANTHONY	8		8		8		8		8						40	0	40
					2		2		2		2						8	0	8
3485	GONZALEZ	JOSE R.		0		8		8		8		8					0	32	32
						2		2		2		2					0	8	8
	GUTIERREZ	JOSE	8		8		8		8		1						33	0	33
					2		2		2								6	0	6
9437	HERNANDEZ	BERNABE	8														8	0	8
																	0	0	0
5643	HERNANDEZ	FRANCISCO	0														0	0	0
																	0	0	0
7020	HERNANDEZ	OSIEL	8		8		8		8		8						40	0	40

				2		2		2		2					8	0	8	
4343	MARTINEZ	JESUS	3												3	0	3	
															0	0	0	
9518	MONARREZ	FERNANDO	3		8		8		8		8				35	0	35	
					2		2		2		2				8	0	8	
0630	PEREZ	IGNACIO JAVIER		8		8		8		8		8			0	40	40	
						2		2		2		2			0	8	8	
5494	RAMOS	DAVID	3		8		8		8		8				35	0	35	
					2		2		2		2				8	0	8	
4882	SOTELO	JAVIER	8		8		8		8		8				40	0	40	
					2		2		2		2				8	0	8	
3024	TABARES	FEDERICO	8		8		8		8		8				40	0	40	
					2		2		2		2				8	0	8	
7561	VALDEZ	EMERITO	8		8		8		8		8				40	0	40	
					2		2		2		2				8	0	8	
1805	VAZQUEZ-ORDAZ	JORGE		8	8		8		8		8				32	8	40	
					2		2		2		2				8	0	8	
TOTAL REG			121	24	128	24	136	24	136	24	129	24	0	0	0	650	120	770
TOTAL OT			0	0	32	6	34	6	34	6	32	6	0	0	0	132	24	156

000093

CRESCENT DUNES THERMOSOLAR PLANT

WEEKLY TIMESHEET

LOCATION:

LOGISTICS / TRUCKING

SHIFT: 1ST

W/E: 4/7/2013

[illegible]

****O Truck Driver****

000094

Exhibit E

Ed Savre

From: Shelley Estela <sestela@grupomara.com>
Sent: Friday, May 10, 2013 2:40 PM
To: 'Ed Savre'
Subject: TRACKING
Attachments: Document0031.pdf

Here is the tracking information for the check that Chary mailed out yesterday.

Thank you,

Shelley Estela
Financial Controller

PROIMTU MMI LLC
Cell No: +1 (775) 482 1905
Tlf. +34 902 215 935
Fax.+34 902 215 936
mail:sestela@grupomara.com
Web. www.grupomara.com





EH 688572951 US



UNITED STATES POSTAL SERVICE®

Customer Copy

Label 11-B, March 2004

Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)			
PO ZIP Code 89047	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> 3rd Del. Day	Postage \$ 19.95	
Date Accepted	Scheduled Date of Delivery	Return Receipt Fee	
Mo. 5 Day 9 Year 13	Month 5 Day 11	\$	
Time Accepted 2:07 PM	Scheduled Time of Delivery	GOD Fee	Insurance Fee
<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	<input type="checkbox"/> Noon <input checked="" type="checkbox"/> PM	\$	\$
Flat Rate, G.W. or Weight	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Total Postage & Fees \$ 17.75	
	Int'l Alpha Country Code	Acceptance Empl. Initials	

FROM: (PLEASE PRINT) PHONE: ()
 PROMPTU, MONT LLC
 GOLDEN MOUNTAIN BLVD
 PO BOX 1308
 TONOPAH NV 89049

FOR PICKUP OR TRACKING

Visit www.usps.com

Call 1-800-222-1811



DELIVERY (POSTAL SERVICE USE ONLY)		
Delivery Attempt	Time	<input type="checkbox"/> AM <input type="checkbox"/> PM Employee Signature
Mo. Day		
Delivery Attempt	Time	<input type="checkbox"/> AM <input type="checkbox"/> PM Employee Signature
Mo. Day		
Delivery Date	Time	<input type="checkbox"/> AM <input type="checkbox"/> PM Employee Signature
Mo. Day		

CUSTOMER USE ONLY	
PAYMENT BY ACCOUNT Express Mail Corporate Acct. No.	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Mail Only) Additional merchandise insurance is void if customer requests waiver of signature. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.
Federal Agency Acct. No. or Postal Service Acct. No.	
<input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Mailbox Signature

TO: (PLEASE PRINT) PHONE: () 708 343 7867
 H2O ENVIRONMENTAL
 6619 SOUTH SUPPLY WAY
 BOISE ID 83716

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES.)
 8 3 7 1 6 + [] [] [] []

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.
 [] [] [] [] [] [] [] [] [] []

30,000
50,000

7000097

Exhibit F



U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division
Western Regional Office
U.S. Dept. of Labor, Wage and Hour Div., 90 7th Street, Suite 13100
San Francisco, CA 94103-6710

April 18, 2014

H2O Environmental, Inc
6679 S Supply Way
Boise ID 83716

Enclosed is a copy of the FORM 941-X that we have forwarded to the Internal Revenue Service as Agent for H2O Environmental, Inc. In any case settled with the Department of Labor calling for gross back wage payments, by agreement with the Internal Revenue Service (IRS), we are required to deduct the employee's share of Social Security at the prevailing rate in effect at the time of actual disbursement to the employee and the Federal Income taxes at the rate of 25%. The IRS then requires that we file tax reports for each calendar quarter.

This is to advise that in these types of cases, i.e. gross back wage settlements, it is the employer's responsibility to report and remit to the IRS your portion of the FICA (Social Security) contribution. The enclosed is intended to facilitate this process.

Sincerely,

Beverly D. Cross
Certifying Officer

(415) 906-9152

Enclosures (2)

FORM 941-X

**ADJUSTED EMPLOYER'S QUARTERLY
FEDERAL TAX RETURN OR CLAIM FOR REFUND
DEPARTMENT OF LABOR, REGION: WESTERN**

Run Date : 4/18/2014

THIS FORM ADJUSTS:
FORM 941

PERIOD: 01/01/2014 to 03/31/2014

Employer	EIN	Gross Wages for period	Correct Taxable Wages for period	Taxable Tips for period	Federal Tax for period	Social Security	Medicare Tax for period	FICA Tax for period
H2O Environmental, Inc 6679 S Supply Way Boise ID 83716	88-0370785	311,195.61	311,195.61	0.00	77,798.65	19,293.76	4,512.01	23,805.77

Explanation of adjustments:

REF IRS SEC. IRS SEC 329-729-11

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
U.S. Dept. of Labor, Wage and Hour Div., 90 7th Street, Suite 13100
San Francisco, CA 94103-6710
Re: Wage And Hour Program 53-0261581F

PER FEDERAL LABOR LAWS, THE DEPARTMENT OF
LABOR HAS ALREADY WITHHELD THE EMPLOYEE'S
SHARE OF FICA. THIS ADJUSTMENT REPRESENTS
ONLY HALF OF THE TAX DUE.

I certify that Forms W-2c, Corrected Wage and Tax Statement, have been filed (as necessary) with the Social Security Administration, and that
(check appropriate boxes):

- ☐ All overcollected income taxes for the current calendar year and all social security and Medicare taxes for the current and prior calendar years have been repaid to employees. For claims of overcollected employee social security and Medicare taxes in earlier years, a written statement has been obtained from each employee stating that the employee has not claimed and will not claim refund or credit of the amount of the overcollection.
- ☐ All affected employees have given their written consent to the allowance of this credit or refund. For claims of overcollected employee social security and Medicare taxes in earlier years, a written statement has been obtained from each employee stating that the employee has not claimed and will not claim refund or credit of the amount of the overcollection.
- ☐ The social security tax and Medicare tax adjustments represent the employer's share only. An attempt was made to locate the employee(s) affected, but the affected employee(s) could not be located or will not comply with the certification requirements.
- ☐ None of this refund or credit was withheld from employee wages.

Signature: *Beverly A. Cross*

Title: Certifying Officer

Date: *4/23/14*

000100

Exhibit G



U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division
Western Regional Office
U.S. Dept. of Labor, Wage and Hour Div., 90 7th Street, Suite 13100
San Francisco, CA 94103-6710

July 03, 2014

H2O Environmental, Inc
6679 S Supply Way
Boise ID 83716

Enclosed is a copy of the FORM 941-X that we have forwarded to the Internal Revenue Service as Agent for H2O Environmental, Inc. In any case settled with the Department of Labor calling for gross back wage payments, by agreement with the Internal Revenue Service (IRS), we are required to deduct the employee's share of Social Security at the prevailing rate in effect at the time of actual disbursement to the employee and the Federal Income taxes at the rate of 25%. The IRS then requires that we file tax reports for each calendar quarter.

This is to advise that in these types of cases, i.e. gross back wage settlements, it is the employer's responsibility to report and remit to the IRS your portion of the FICA (Social Security) contribution. The enclosed is intended to facilitate this process.

Sincerely,

Beverly D. Cross
Certifying Officer

(415) 906-9152

Enclosures (2)

FORM 941-X

**ADJUSTED EMPLOYER'S QUARTERLY
FEDERAL TAX RETURN OR CLAIM FOR REFUND
DEPARTMENT OF LABOR, REGION: WESTERN**

Run Date : 7/3/2014

THIS FORM ADJUSTS:

FORM 941

PERIOD: 04/01/2014 to 06/30/2014

Employer	EIN	Gross Wages for period	Correct Taxable Wages for period	Taxable Tips for period	Federal Tax for period	Social Security	Medicare Tax for period	FICA Tax for period
H2O Environmental, Inc 6679 S Supply Way Boise ID 83716	88-0370785	64,619.23	64,619.23	0.00	16,154.73	4,006.30	936.91	4,943.21

Explanation of adjustments:

REF IRS SEC. IRS SEC 329-729-11

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
U.S. Dept. of Labor, Wage and Hour Div., 90 7th Street, Suite 13100
San Francisco, CA 94103-6710
Re: Wage And Hour Program 53-0261581F

PER FEDERAL LABOR LAWS, THE DEPARTMENT OF
LABOR HAS ALREADY WITHHELD THE EMPLOYEE'S
SHARE OF FICA. THIS ADJUSTMENT REPRESENTS
ONLY HALF OF THE TAX DUE.

I certify that Forms W-2c, Corrected Wage and Tax Statement, have been filed (as necessary) with the Social Security Administration, and that
(check appropriate boxes):

- ☐ All overcollected income taxes for the current calendar year and all social security and Medicare taxes for the current and prior calendar years have been repaid to employees. For claims of overcollected employee social security and Medicare taxes in earlier years, a written statement has been obtained from each employee stating that the employee has not claimed and will not claim refund or credit of the amount of the overcollection.
- ☐ All affected employees have given their written consent to the allowance of this credit or refund. For claims of overcollected employee social security and Medicare taxes in earlier years, a written statement has been obtained from each employee stating that the employee has not claimed and will not claim refund or credit of the amount of the overcollection.
- ☐ The social security tax and Medicare tax adjustments represent the employer's share only. An attempt was made to locate the employee(s) affected, but the affected employee(s) could not be located or will not comply with the certification requirements.
- ☐ None of this refund or credit was withheld from employee wages.

Signature: *Beverly A. Cross*

Title: Certifying Officer

Date: *7/9/14*

000103

Exhibit H



U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division
Western Regional Office
U.S. Dept. of Labor, Wage and Hour Div., 90 7th Street, Suite 13100
San Francisco, CA 94103-6710

October 01, 2014

H2O Environmental, Inc
6679 S Supply Way
Boise ID 83716

Enclosed is a copy of the FORM 941-X that we have forwarded to the Internal Revenue Service as Agent for H2O Environmental, Inc. In any case settled with the Department of Labor calling for gross back wage payments, by agreement with the Internal Revenue Service (IRS), we are required to deduct the employee's share of Social Security at the prevailing rate in effect at the time of actual disbursement to the employee and the Federal Income taxes at the rate of 25%. The IRS then requires that we file tax reports for each calendar quarter.

This is to advise that in these types of cases, i.e. gross back wage settlements, it is the employer's responsibility to report and remit to the IRS your portion of the FICA (Social Security) contribution. The enclosed is intended to facilitate this process.

Sincerely, .

Beverly D. Cross
Certifying Officer

Enclosures (2)

FORM 941-X

**ADJUSTED EMPLOYER'S QUARTERLY
FEDERAL TAX RETURN OR CLAIM FOR REFUND
DEPARTMENT OF LABOR, REGION: WESTERN**

Run Date : 10/1/2014

THIS FORM ADJUSTS:

FORM 941

PERIOD: 07/01/2014 to 09/30/2014

Employer	EIN	Gross Wages for period	Correct Taxable Wages for period	Taxable Tips for period	Federal Tax for period	Social Security	Medicare Tax for period	FICA Tax for period
H2O Environmental, Inc 6679 S Supply Way Boise ID 83716	88-0370785	1,095.92	1,095.92	0.00	273.98	67.94	15.89	83.83

Explanation of adjustments:

REF IRS SEC. IRS SEC 329-729-11

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
U.S. Dept. of Labor, Wage and Hour Div., 90 7th Street, Suite 13100
San Francisco, CA 94103-6710
Re: Wage And Hour Program 53-0261581F

PER FEDERAL LABOR LAWS, THE DEPARTMENT OF
LABOR HAS ALREADY WITHHELD THE EMPLOYEE'S
SHARE OF FICA. THIS ADJUSTMENT REPRESENTS
ONLY HALF OF THE TAX DUE.

I certify that Forms W-2c, Corrected Wage and Tax Statement, have been filed (as necessary) with the Social Security Administration, and that
(check appropriate boxes):

- ☐ All overcollected income taxes for the current calendar year and all social security and Medicare taxes for the current and prior calendar years have been repaid to employees. For claims of overcollected employee social security and Medicare taxes in earlier years, a written statement has been obtained from each employee stating that the employee has not claimed and will not claim refund or credit of the amount of the overcollection.
- ☐ All affected employees have given their written consent to the allowance of this credit or refund. For claims of overcollected employee social security and Medicare taxes in earlier years, a written statement has been obtained from each employee stating that the employee has not claimed and will not claim refund or credit of the amount of the overcollection.
- ☐ The social security tax and Medicare tax adjustments represent the employer's share only. An attempt was made to locate the employee(s) affected, but the affected employee(s) could not be located or will not comply with the certification requirements.
- ☐ None of this refund or credit was withheld from employee wages.

Signature: *Beverly D. Cross*

Title: Certifying Officer

Date: *10/22/14*

000106

Exhibit I



Industrial & Hazardous Waste: Remediation - Transport - Disposal
24-Hour Emergency Response

INVOICE

Invoice Date	7/1/2014
Invoice #	008393283
Due Date	7/1/2014

Bill To:

PROIMTU
4600 EAST WASHINGTON STREET
SUITE #305
PHOENIX, ARIZONA 85034

Service Address:

CRESCENT DUNES SOLAR PROJECT
TONOPAH, NV

Service Date	Job	Sales Order #	P.O. #	Manifest #	Terms
7/1/2014					Due on receipt

Billing Phone #

Description	Price	Quantity	Amount
EMPLOYER TAXES RELATED TO THE BACK WAGES PAID RESULTING FROM THE DOL INVESTIGATION EMPLOYER TAXES DUE	23,805.77		23,805.77

**REMIT TO: H2O ENVIRONMENTAL, INC., DEPT. #201
P.O. BOX 220, BETTENDORF, IA 52722**

Total \$23,805.77

PLEASE MAKE YOUR PAYMENT WITHIN THE TERMS STATED ABOVE.

Past due accounts will be assessed a finance charge of 1.5% of the outstanding balance per month.

For billing inquiries, please call (208) 343-7867

Remit payment to: Dept. #201, P.O. Box 220, Bettendorf, IA 52722

We sincerely appreciate your business.

000108

FENNEMORE CRAIG, P.C.
Brenoch R. Wirthlin
Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
Telephone: (702) 692-8000
Idaho State Bar No. 8044
Email: bwirthli@fclaw.com
Attorney for Defendant
Proimtu MMI, LLC

NO. _____
FILED
A.M. _____ P.M. _____

NOV 20 2015

CHRISTOPHER D. RICH, Clerk
BY JAMIE MARTIN
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF ADA

H2O ENVIRONMENTAL, INC., an Nevada
company,

Plaintiff,

v.

PROIMTU MMI, LLC, a Nevada company,

Defendant.

No. CV OC 1505838

**DEFENDANT'S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS FOR
LACK OF PERSONAL
JURISDICTION**

This dispute arises between Plaintiff H2O Environmental, Inc. ("H2O"), a Nevada company, and Defendant Proimtu MMI, LLC ("Proimtu"), a Nevada company, for monies allegedly owed in coordinating Nevada construction workers to perform services on a Nevada solar project. Despite its status as a Nevada entity, H2O seeks to subject Proimtu to Idaho jurisdiction. Tellingly, H2O continuously references Boise, Idaho in its Opposition, but all of H2O's references relate exclusively to its *own actions* in Idaho—not those of Proimtu. H2O has not and cannot satisfy its burden to show how Proimtu, a Nevada company, purposefully availed itself of Idaho jurisdiction by engaging in business with another Nevada company (H2O) for a Nevada-based solar project. Consequently, Proimtu, by and through its counsel of record

ORIGINAL

Se

making a special appearance, respectfully requests that this Court dismiss this lawsuit for lack of personal jurisdiction.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On or about November 2012, Proimtu emailed H2O to hire and employ Nevada-based construction laborers for a solar project in Tonopah, Nevada. Affidavit of Gabriel Gonzalez ("Gonzalez Affidavit") ¶ 4; *see also* Savre Affidavit ¶ 6, Ex. A. The project required Nevada-based workers as the scope of Proimtu's work was in Tonopah, Nevada. *Id.* ¶ 5.

H2O asserts that somehow Proimtu knew when it contacted H2O in November 2012 that H2O purportedly had its headquarters in Idaho. *See* Opposition at 6 ("Proimtu required H2O to 'hire workers' and 'take care of their payroll' knowing that both functions would be performed by H2O at its headquarters in Boise."). This assertion by H2O is incorrect. Gabriel Gonzalez, Proimtu's Chief Operating Officer, did not have any idea that H2O was purportedly headquartered in Idaho, and in fact, believed that H2O was an Arizona-based company as the first contact Proimtu had with H2O was in Arizona. *See* Gonzalez Affidavit ¶ 6. Proimtu only emailed and called H2O representatives that may nor may not have been Idaho at the time they received communication from Proimtu. *Id.* ¶ 7.

In its Opposition, H2O repeatedly made reference to its own activities in Idaho to somehow try and convey that Proimtu must have known that H2O was "headquartered" in Idaho when it reached out to H2O for construction employment services. Notably, H2O does not explain how Proimtu could have divined H2O's Idaho connection, despite the fact that H2O is a Nevada entity and that the first contact between Proimtu and H2O took place in Arizona. H2O's corporate entity details on the Nevada Secretary of State website state that H2O is a domestic

corporation of Nevada. See H2O Environmental Entity Details, *Nevada Secretary of State Barbara K. Cegavske* (last accessed November 20, 2015)¹, attached to the Gonzalez Affidavit as **Exhibit A**.

Further, the background of H2O on its own website tells quite a different story from what is asserted in the Opposition:

H2O Environmental was founded by John Bradley in 1996. A veteran of the U. S. Marine Corps, John initially saw a growing need for a statewide environmental services company providing a full range of services for the state of Nevada. The company quickly expanded to two operational bases – Las Vegas and Reno – in our first few years of operation. After over a decade of developing and refining our operational practices to provide a complete range of services to our customers, we began opening new operational bases in 2007 with the strategy to cover the geographic area in the heart of the Western United States that now comprises our service territory.

See “Who We Are,” *H2O Environmental* (last accessed November 18, 2015)², attached to the Gonzalez Affidavit as **Exhibit B** (emphasis added). H2O’s website also lists five locations—two of which are located in Nevada. See “Locations,” *H2O Environmental* (last accessed November 18, 2015)³, attached to the Gonzalez Affidavit as **Exhibit C**. Further, it bears noting that H2O inaccurately labeled itself an Idaho company in the caption of its Complaint in this matter. However, as H2O’s history and two Nevada locations confirm, not only is H2O a Nevada entity, it is also primarily a Nevada-based company.

¹ Available at:

<http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=H2S%252f%2520ZcBDYhQdArhdD1VO%253d%253d&nt7=0>

² Available at <http://h2oenvironmental.org/who-we-are.html>

³ Available at <http://h2oenvironmental.org/coverage.html>

Finally, Proimtu would not have thought H2O was an Idaho company – which it is not – given that in its written contract for construction personnel in Arizona, H2O identified itself as “Nevada corporation.” See Exhibit D to the Gonzalez Affidavit. H2O also identified its place of business as 2364 S. Airport Blvd., Chandler, AZ 85286. *Id.* This written contract (“Arizona Agreement”) was executed in October 2012, just one month before the alleged oral contract at bar. Nowhere in the Arizona Agreement does it mention Idaho or that by engaging in this agreement Proimtu was subjecting itself to Idaho jurisdiction. *Id.* If anything, H2O’s identification of itself as a “Nevada corporation” having a “place of business” in Chandler, Arizona undercuts its current position and led Proimtu to believe that when it commissioned H2O for the Tonopah project, it was contracting with a Nevada corporation that does business in Arizona. *Id.*; see also Gonzalez Affidavit at ¶¶ 8-9.

II. ARGUMENT & AUTHORITY

A. All Idaho efforts were H2O’s—not Proimtu’s.

For this Court to have personal jurisdiction over Proimtu, Proimtu must have “purposefully availed itself of doing business in the forum.” This means that Proimtu “must have performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state.” *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (quoting *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990)). All of the Idaho efforts H2O describes were performed *exclusively* by H2O—not Proimtu. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (holding that purposeful availment requires that the defendant’s contacts with the forum state “proximately result from the actions by the defendant *himself*”); see also *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (holding that purposeful availment “consists of evidence of the *defendant’s actions in the forum*”

(emphasis added)). As cited in Proimtu's Motion, the U.S. Supreme Court has explicitly, and very recently, held that the relevant jurisdictional question asks "whether the defendant's conduct connects him to the forum in a meaningful way." See *Walden v. Fiore*, 134 S. Ct. 1115, 1125 (2014). In doing so, *Walden* extensively analyzed why knowledge of a plaintiff's residence or where a plaintiff experienced a particular effect is insufficient to constitute purposeful availment. *Id.* at 1124–25.

H2O's Opposition ignores *Walden* and instead focuses on the irrelevant actions of H2O in Idaho. For example, H2O notes that it provided its W-9 to Proimtu and that the W-9 identified H2O's address as "6679 South Supply Way, Boise, ID 83716." H2O also notes that it provided Proimtu with H2O's bank information located at "1205 S. Broadway Ave., Boise, ID 83706." But neither of these identifications describe any affirmative conduct on Proimtu's part. Merely identifying a location to a party does not subject that party to that location's jurisdiction. See, e.g., *Phillips v. Prairie Eye Ctr.*, 530 F.2d 22, 28 (1st Cir. 2008) (noting that courts have held "in a variety of contexts, that the defendant's awareness of the location of the plaintiff is not, on its own, enough to create personal jurisdiction over a defendant"); accord *Harlow v. Children's Hosp.*, 432 F.3d 50 (1st Cir. 2005) (rejecting argument that because defendant knew plaintiff resided in Maine, jurisdiction was proper because "[j]urisdiction cannot be created by and does not travel with the plaintiff patient wherever she goes"); see also *Walden*, 134 S. Ct. at 1124–25 ("[The defendant's] actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections.")⁴ For personal jurisdiction to comport with due process, Proimtu needed to have

⁴ Proimtu also directs the Court to the cases cited on pages 5–6 of its Motion.

reached out into Idaho and availed itself of the privileges and benefits of Idaho's law. It did not do either.

H2O also asserts that H2O provided Proimtu services in Boise, Idaho. Again, however, these are all activities by Plaintiff H2O, and are irrelevant under a personal jurisdiction analysis. *Phillips*, 530 F.2d at 28 (requiring that a defendant's contacts "must be deliberate, and 'not based on the unilateral actions of another party'" (quoting *Adelson v. Hananel*, 510 F.3d 43, 50 (1st Cir. 2007))). H2O cannot transmute any of its Idaho efforts onto Proimtu.

The only act by Proimtu that in any way relates to Idaho is correspondence, *i.e.*, sending emails, making occasional phone calls, and intermittent mailing of a reimbursement check to Boise. See Gonzalez Affidavit at ¶ 10. Proimtu never at any point intentionally travelled to Idaho during the duration of time relevant to H2O's complaint in this matter. *Id.* at ¶ 11. Further, Proimtu never sought to do business of any nature whatsoever in Idaho. *Id.* at ¶ 12.

As described in Proimtu's Motion, minor emails and phone calls are insufficient to subject a defendant to a foreign forum. See Motion at 6 (collecting cases). And the singular use of mail, which indisputably represents Proimtu's only Idaho-based attenuated contact, is the prime example of "random," fortuitous," or attenuated" contacts that a majority of courts have held does not amount to purposeful availment. See, *e.g.*, *LAK, Inc. v. Deer Creek Enters.*, 885 F.2d 1293, 1300 (6th Cir. 1989), *cert. denied*, 494 U.S. 1056 (1990); *Am. Greetings Corp. v. Cohn*, 839 F.2d 1164, 1169 (6th Cir. 1988); *Kerry Steel, Inc. v. Paragon Indus., Inc.*, 106 F.3d 147 (6th Cir. 1987) ("It is immaterial that Paragon placed telephone calls and sent faxes to Kerry Steel in Michigan."); *Scullin Steel Co. v. Nat'l Ry. Utilization Corp.*, 676 F.2d 309, 314 (8th Cir. 1982) ("The use of interstate facilities (telephone, the mail), the making of payments in the forum state, and the provision for delivery within the forum state are secondary or ancillary

factors and cannot alone provide the ‘minimum contacts’ required by due process”); *Aaron Ferer & Sons. Co. v. Atlas Scrap Iron & Metal Co.*, 558 F.2d 450, 455 (8th Cir. 1977) (“The letters and telephone calls in this purely commercial setting did not supply the necessary minimal contact.”).

Moreover, if such limited mailing *after the contract was formed* constituted purposeful availment, plaintiffs could subject defendants to suit all over the country by requiring defendants to mail something to a particular jurisdiction. And in this case, even though Proimtu did not intend to subject itself to suit in Idaho, it was forced to mail the package to Idaho pursuant to H2O’s request. This scenario is exactly what the *voluntary* purposeful availment requirement is designed to prevent.

The fact is that it is convenient for H2O to sue Proimtu in Idaho because H2O’s principals live in the state. *Sawtelle v. Farrell*, 70 F.3d 1381, 1392 (1st Cir. 1995) (finding no purposeful availment when “the [defendants’] only connection with [the forum state] was the [plaintiffs’] residence there”). However, H2O cannot violate settled principles of due process for its own convenience. Accordingly, Proimtu respectfully submits that its Motion must be granted.

B. Idaho’s Long-Arm Statute is irrelevant.

As explained in the Motion, Idaho’s long-arm statute has a broader application of personal jurisdiction than the federal Due Process Clause. As such, whether Proimtu’s actions fell within Idaho Code § 5-514’s “business transaction” definition is immaterial for the purposes of the jurisdictional analysis. The relevant governing analysis asks is whether Proimtu’s actions are sufficient for personal jurisdiction to attach under the Due Process Clause. This analysis is governed by federal law. See *Brown v. Flowers Indus., Inc.*, 688 F.2d 328, 332 (5th Cir. 1982) (“[A]ssertion of jurisdiction over the defendant must be consistent with the due process clause of the fourteenth amendment, a requirement *that is controlled by federal law.*” (emphasis added)).

As set forth above, Proimtu's actions are wholly insufficient for the assertion of personal jurisdiction in Idaho under the Due Process Clause as governed by federal law.

C. "Fair play and substantial justice" requires the suit to be located in Nevada.

In determining whether the exercise of jurisdiction over a nonresident defendant comports with "fair play and substantial justice," courts consider seven factors: (1) the extent of the defendants' purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1487-88 (9th Cir. 1993).

Regarding the first prong, "even if there is sufficient 'interjection' into the state to satisfy the [purposeful availment prong], the degree of interjection is a factor to be weighed in assessing the overall reasonableness of jurisdiction under the [reasonableness prong]." *Ins. Co. of N.A. v. Marina Salina Cruz*, 649 F.2d 1266, 1271 (9th Cir. 1981). To the extent the Court believes that Proimtu's intermittent mailings amounted to purposeful availment, the degree of such mailings in comparison to the entire transaction (i.e., two Nevada companies engaging Nevada workers for a Nevada solar project) renders hauling Proimtu into Idaho unreasonable and more importantly, would be in direct violation of Proimtu's right to due process.

Second, Proimtu has no connections with Idaho. Although counsel is barred in Idaho, counsel is located in Las Vegas, Nevada and traveling to and from Idaho to litigate the merits of this dispute would be burdensome, especially considering the amount in controversy. On the

other hand, *H2O is a Nevada company*. In stark contrast to Proimtu's lack of relation to Idaho, it is indisputable that both H2O and Proimtu are Nevada entities, subject to Nevada law.

The third and seventh factors strongly suggest that it is unreasonable to haul Proimtu into Idaho when Nevada contacts permeate throughout the entire litigation. In fact, Nevada actually has quite a strong interest in adjudicating the merits of this dispute. See NRS 108.2453 (rendering any "condition, stipulation, or provision" in a construction contract performed in Nevada that attempts to "require any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other agreement" to occur in any state other than Nevada "contrary to public policy," "void and unenforceable"). As NRS 108.2453 makes clear, the State of Nevada has a strong public policy interest in adjudicating contracts in Nevada construction cases in Nevada.

Finally, it is critical to note that H2O suggests that "Idaho has a strong interested [sic] in providing a forum for its Idaho-based companies to seek contractual relief." Opposition at 10. This may be true, but in this case is irrelevant. H2O is a *Nevada company*. Accordingly, Proimtu respectfully requests that the Motion be granted.

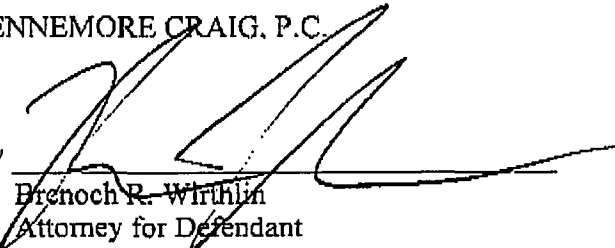
III. CONCLUSION

For all these reasons, Proimtu respectfully requests this Court grant its Motion and dismiss H2O's Idaho Complaint for lack of personal jurisdiction.

RESPECTFULLY SUBMITTED this 20th day of November, 2015.

FENNEMORE CRAIG, P.C.

By


Brenoch R. Wirthlin
Attorney for Defendant
Proimtu MMI, LLC

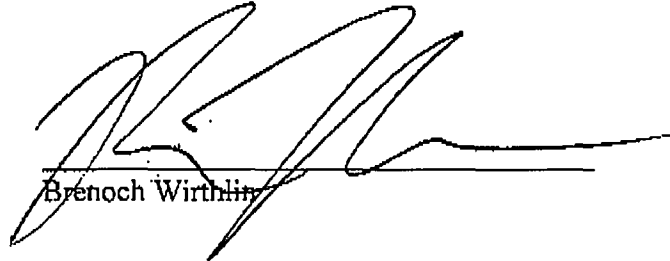
CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 2015, I caused a copy of **Defendant's Reply in Support of Its Motion to Dismiss for Lack of Personal Jurisdiction** to be served upon the following, in the manner indicated below:

Vaughn Fisher
Allison Blackman
Fisher Rainey Hudson
950 W. Bannock Street, Suite 630
Boise, ID 83702
Email: vaughn@frhtriallawyers.com
Email: allison@frhtriallawyers.com

(X) Via U.S. Mail
() Via Overnight Mail
() Via Hand Delivery
(X) Via Email

Attorneys for Plaintiff



Brenoch Wirthlin

RECEIVED

ORIGINAL

NO. _____ FILED _____
A.M. _____ P.M. 312

NOV 24 2015

Ada County Clerk

FENNEMORE CRAIG, P.C.

Brenoch R. Wirthlin

Suite 1400 Bank of America Plaza

300 South Fourth Street

Las Vegas, NV 89101

Telephone: (702) 692-8000

Idaho State Bar No. 8044

Email: bwirthli@fclaw.com

NOV 24 2015

CHRISTOPHER D. RICH, Clerk

By AUSTIN LOWE
DEPUTY

Attorneys for Defendant

Proimtu MMI, LLC

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF ADA

H2O ENVIRONMENTAL, INC., a Nevada
company,

Plaintiff,

v.

PROIMTU MMI, LLC, a Nevada company,

Defendant.

No. CV OC 1505838

**AFFIDAVIT OF GABRIEL
GONZALEZ IN SUPPORT OF
DEFENDANT'S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS FOR
LACK OF PERSONAL
JURISDICTION**

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

Gabriel Gonzalez, being first duly sworn upon his oath, deposes and says that he has personal knowledge and is competent to testify to the following:

1. I am Chief Operating Officer of Proimtu MMI, LLC ("Proimtu"), defendant herein.

2. I make this affidavit in support of Proimtu's Reply in Support of its Motion to Dismiss for lack of personal jurisdiction in the above-entitled action. All facts stated herein are based upon my personal knowledge, except for those matters stated on information and belief and as to those matters, I believe them to be true.

3. Proimtu is a Nevada limited liability company.

AFFIDAVIT OF GABRIEL GONZALEZ IN SUPPORT OF DEFENDANT'S REPLY IN
SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION 000119

4. Proimtu commissioned H2O Environmental, Inc. ("H2O") to hire and employ Nevada-based construction laborers for a solar project in Tonopah, Nevada.

5. The project required Nevada-based workers as the scope of Proimtu's work was in Tonopah, Nevada.

6. At the time Proimtu made contact with H2O, Proimtu did not have any idea that H2O was purportedly headquartered in Idaho. In fact, I believed that H2O was an Arizona-based company as the first contact Proimtu had with H2O was in Arizona.

7. Proimtu only emailed and called H2O representatives that may nor may not have been Idaho at the time they received communication from Proimtu.

8. When Proimtu contacted H2O representatives via email and phone for workers in Nevada, it did not believe that it was availing itself of Idaho jurisdiction.

9. On or about October 2012, Proimtu contracted with H2O for an Arizona project. The written contract notes that H2O is a Nevada corporation. The contract lists H2O's place of business at 2364 S. Airport Blvd., Chandler, AZ 85286. In light of this written contract, I believed H2O was a Nevada company doing business in Arizona.

10. Aside from sending emails, making occasional phone calls and mailing paystubs to H2O representatives at an Idaho address, Proimtu never knowingly had any direct contact with individuals in Idaho.

11. Proimtu never at any point intentionally travelled to Idaho during the duration of time relevant to H2O's complaint in this matter.

12. Proimtu never sought to do business of any nature whatsoever in Idaho.

13. Attached hereto as Exhibit A is the H2O Environmental Entity Details, *Nevada Secretary of State Barbara K. Cegavske* (last accessed November 20, 2015).

14. Attached as Exhibit B and C hereto are printouts from H2O's website.

15. Attached Exhibit D hereto is an Agreement for Subcontracting Services between Proimtu and H2O dated October 1, 2012.



GABRIEL GONZALEZ

Signed and sworn to (or affirmed) before
me on this 20 day of November, 2015.
by Gabriel Gonzalez.

Ernest E. Trebizo
NOTARY PUBLIC in and for
the State of NV

My appointment expires AUG. 20 2019

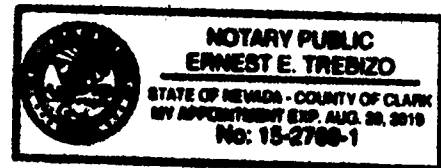


Exhibit A

H2O ENVIRONMENTAL, INC.

Business Entity Information

Status:	Active	File Date:	10/25/1996
Type:	Domestic Corporation	Entity Number:	C22184-1996
Qualifying State:	NV	List of Officers Due:	10/31/2016
Managed By:		Expiration Date:	
NV Business ID:	NV19961214703	Business License Exp:	10/31/2016

Additional Information

Central Index Key:	
--------------------	--

Registered Agent Information

Name:	THE CORPORATION TRUST COMPANY OF NEVADA	Address 1:	701 S CARSON ST STE 200
Address 2:		City:	CARSON CITY
State:	NV	Zip Code:	89701
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

Financial Information

No Par Share Count:	5,000.00	Capital Amount:	\$ 0
---------------------	----------	-----------------	------

No stock records found for this company

Officers

☒ Include Inactive Officers

President - JOHN W BRADLEY

Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Historical	Email:	

Secretary - JOHN W BRADLEY

Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Historical	Email:	

000123

Treasurer - JOHN W BRADLEY			
Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Historical	Email:	
President - JOHN W BRADLEY			
Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Active	Email:	
Secretary - JOHN W BRADLEY			
Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Active	Email:	
Treasurer - JOHN W BRADLEY			
Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Active	Email:	
Director - JOHN W BRADLEY			
Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Active	Email:	
Director - GREGORY SCYPHERS			
Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Historical	Email:	
Director - GREGORY SCYPHERS			
Address 1:	6679 SOUTH SUPPLY WAY	Address 2:	
City:	BOISE	State:	ID
Zip Code:	83716	Country:	USA
Status:	Active	Email:	

— Actions\Amendments			
Action Type:	Articles of Incorporation		
Document Number:	C22184-1996-001	# of Pages:	5

000124

File Date:	10/25/1996	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C22184-1996-008	# of Pages:	1
File Date:	11/3/1998	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C22184-1996-007	# of Pages:	1
File Date:	9/10/1999	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C22184-1996-009	# of Pages:	1
File Date:	9/7/2000	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C22184-1996-005	# of Pages:	1
File Date:	9/26/2001	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C22184-1996-006	# of Pages:	1
File Date:	9/17/2002	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	C22184-1996-003	# of Pages:	1
File Date:	9/26/2002	Effective Date:	
WALLACE D. STEPHENS SUITE 330			
401 RYLAND STREET RENO NV 89502 MTF			
Action Type:	Annual List		
Document Number:	C22184-1996-004	# of Pages:	1
File Date:	11/18/2003	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C22184-1996-002	# of Pages:	1
File Date:	10/23/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Annual List		
Document Number:	20050410969-16	# of Pages:	1
File Date:	9/6/2005	Effective Date:	
(No notes for this action)			

Action Type:	Amended List		
Document Number:	20050465844-68	# of Pages:	1
File Date:	10/6/2005	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Address Change		
Document Number:	20060372115-97	# of Pages:	2
File Date:	6/9/2006	Effective Date:	
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Document Number:	20060370605-89	# of Pages:	2
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Action Type:	Annual List		
Document Number:	20110751807-12	# of Pages:	1

File Date:	10/20/2011	Effective Date:	
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Document Number:	20120003806-72	# of Pages:	1
File Date:	1/4/2012	Effective Date:	
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Action Type:	Annual List		
Document Number:	20120735878-43	# of Pages:	1
File Date:	10/30/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130661613-09	# of Pages:	1
File Date:	10/9/2013	Effective Date:	
(No notes for this action)			
Action Type:	Amended & Restated Articles		
Document Number:	20130824748-89	# of Pages:	4
File Date:	12/17/2013	Effective Date:	
Previous Stock Value: No Par Value Shares: 2,500 ----- Total Authorized Capital: \$ 0.00 New Stock Value: No Par Value Shares: 5,000 ----- Total Authorized Capital: \$ 0.00			
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Document Number:	20140281920-89	# of Pages:	6
File Date:	4/17/2014	Effective Date:	
(No notes for this action)			
Action Type:	Amended List		
Document Number:	20140294098-89	# of Pages:	1
File Date:	4/22/2014	Effective Date:	
(No notes for this action)			
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(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140705591-94	# of Pages:	1
File Date:	10/7/2014	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		

Document Number:	20150258931-46	# of Pages:	1
File Date:	6/5/2015	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20150371229-32	# of Pages:	2
File Date:	8/19/2015	Effective Date:	
(No notes for this action)			

Exhibit B



24 Hour Hazmat Response (866) H2O-SPILL | Contact



[HOME](#)[WHAT WE OFFER](#)[WHO WE ARE](#)[HOW WE WORK](#)[EQUIPMENT](#)[LOCATIONS](#)

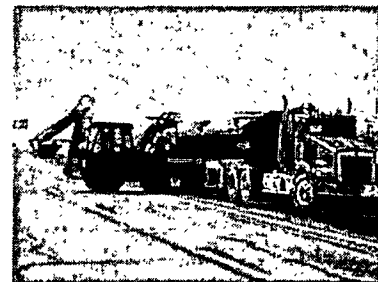
WHO WE ARE

H2O Environmental, Inc., is a full-service, hazardous materials firm providing our customers with superior responses to emergency situations, management of hazardous materials for ongoing operations, industrial cleaning and training. We are big enough to provide the full complement of expertise and equipment to deal with any situation yet small enough to consistently outperform our competitors in response time and efficiency.

H2O Environmental was founded by John Bradley in 1996. A veteran of the U. S. Marine Corps, John initially saw a growing need for a statewide environmental services company providing a full range of services for the state of Nevada. The company quickly expanded to two

HELPFUL RESPONSE INFORMATION

Information to have
ready when calling
about
an emergency spill +



operational bases – Las Vegas and Reno – in our first few years of operation. After over a decade of developing and refining our operational practices to provide a complete range of services to our customers, we began opening new operational bases in 2007 with the strategy to cover the geographic area in the heart of the Western United States that now comprises our service territory.



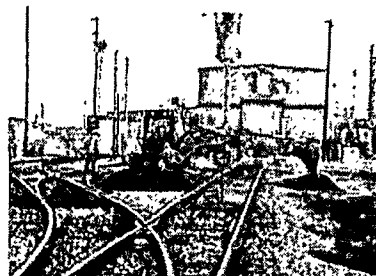
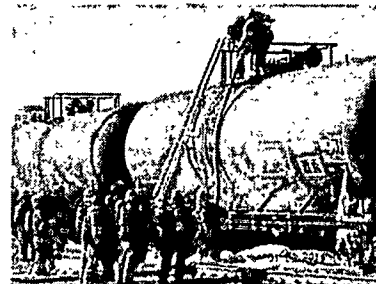
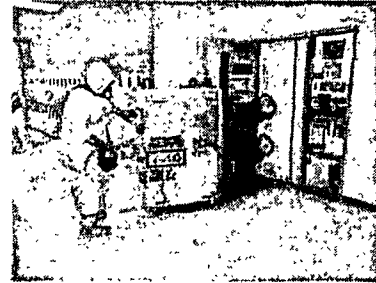
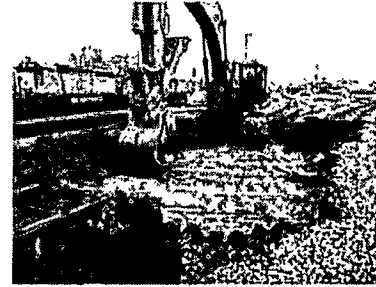
John Bradley - Founder, President and CEO
john@envcleanup.com

After service in the U. S. Marine Corps John worked in the excavation industry and attended the University of Nevada Reno. In 1989 started Waters Excavation in Reno NV with George Waters of Waters Vacuum Truck Service. During the 6 years together John saw a need for a full service statewide vacuum truck service and opened H2O Environmental in Las Vegas in 1996. Over the last 18 years H2O Environmental has been developed and designed into a full service environmental company that takes care of our customers unique concerns in our geographic areas.



Stan Leopard - Partner, Chairman of the Board
stan@envcleanup.com

Following service as a top USAF instructor pilot and regular officer, Stan's professional career



has been focused on developing, leading and monetizing private enterprises in a variety of roles: CEO, chairman, founder, board member, strategic advisor and investor. Stan has served as CEO of seven companies – four where he was a founder and three as a restructuring executive - and as chairman of twelve other mid-sized private companies. Stan's breadth of experience and expertise enables him to provide leadership in innovation, producing competitive advantages and building top performing enterprises. Working from a values-based philosophy of business, Stan is committed to creating both economic and social wealth for all stakeholders in H2O.



Jeffrey Hanhausen - Partner, Board member

jeff@envcleanup.com

Jeffrey Hanhausen has spent over 30 years in executive roles building powerful teams. He has described the purpose of the roles President, COO, and CFO as "building enterprise value through operations." In holding these roles himself, he has shown acumen for constituting and developing high performance teams, designing and executing competitive advantages in operational practices, and reducing costs in situations of radical market

change. He has consistently accomplished superior operating results in a variety of situations, contributing to a strong balance sheet and increased enterprise value.

In several opportunities covering three different industries, Jeffrey took enterprises that were threatened by competition, weak strategies and broken operational practices and produced stability and then competitive advantage. His work to turn around these enterprises produced significant returns to the owners and avoided potential business-ending threats.



Greg Scyphers, CEM – Principal,
Executive Vice President
greg@envcleanup.com

Greg Scyphers received his Bachelor of Science degree in Environmental and Resource Science focusing on Environmental Chemistry and Environmental Toxicology from The University of Nevada, Reno. Greg acquired a breadth of experience before joining H2O Environmental, Inc. in 1999. He developed skills in the EPA methods of analysis for organics at an environmental laboratory, performed public health and safety duties in vector borne disease identification and control and gained a broad knowledge in Hazmat

emergency response and remediation. Greg ran the company's Reno base from 1999 thru 2013 with responsibility to build and develop the new base, maintain and expand staff expertise and directly manage large-scale emergency response incidents and remediation projects.

Greg added regulatory compliance for the entire firm to his responsibilities in 2006. This role includes ensuring that H2O Environmental complies company-wide with waste handling and disposal regulations, monitoring and implementing changes to DOT and EPA regulations and auditing disposal sites. Greg was named Executive Vice President in 2013. In this role he is developing and expanding the company's standard practices for operations and compliance, working directly with the team of base managers and other executive team members.



Edward Savre, CPA - Chief Financial Officer
ed@envcleanup.com

Edward is a certified public accountant through the Idaho State Board of Accountancy and leads the corporate finance department. His 16 years of experience in public and private accounting bring a high level of accountability, accuracy, reliability

and integrity to the financial operations of the company. Edward earned his Business Administration degree from California State University - Long Beach in 1997. He is a member of the Idaho Society of Certified Public Accountants and the American Institute of Certified Public Accountants.

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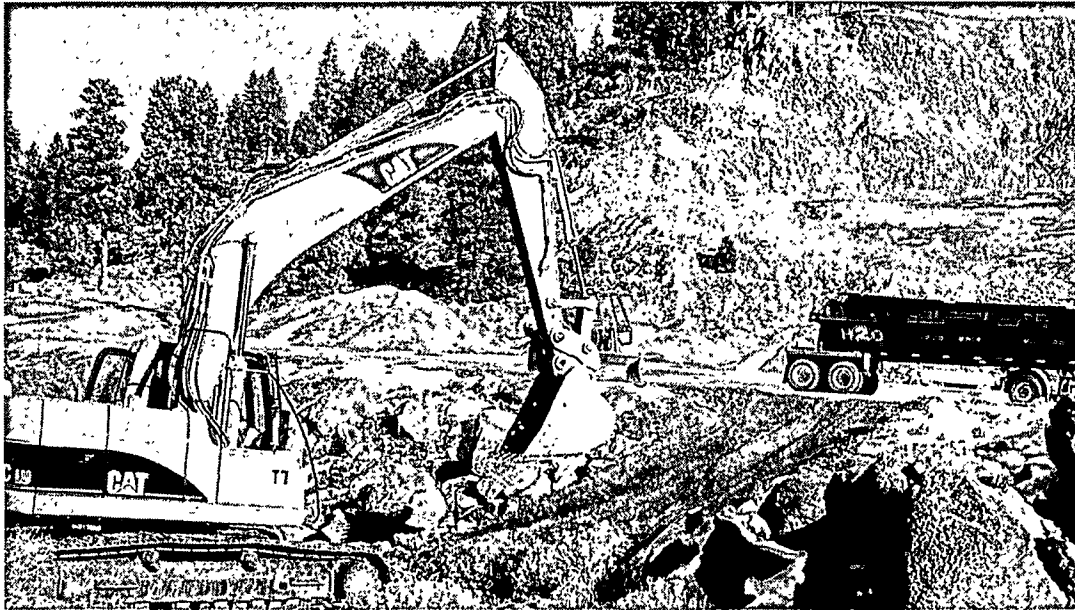
Copyright 2014 H2O Environmental

Exhibit C



24 Hour Hazmat Response (866) H2O-SPILL | Contact

Trusted experts for 18 years



HOME WHAT WE OFFER WHO WE ARE HOW WE WORK

EQUIPMENT LOCATIONS BLOG

COVERAGE

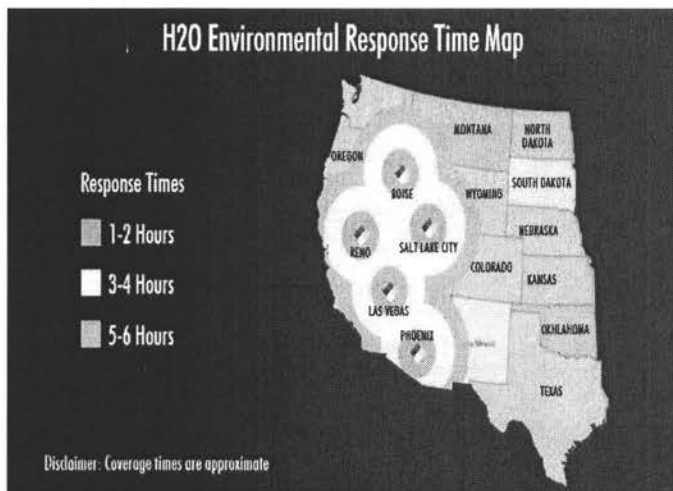
Spill Response Capabilities

- » U.S. Coast Guard Oil Spill Response Organization rated for petroleum spills on swift water rivers and lakes.
- » Petroleum fuels and DOT hazardous material chemical releases.
- » Bulk releases or tanker roll-overs involving toxics, flammables and corrosives.
- » Shifted loads, leaking drums, ruptured diesel fuel tanks and major truck crashes from highway carriers.
- » Crime scene, illegal drug lab and infectious/biological substance removal.
- » Mercury decontamination of residential and commercial sites.

BASES OF OPERATION

- » Boise Base
- » Las Vegas Base
- » Reno Base
- » Phoenix Base
- » Salt Lake City Base

View the response time map below for coverage and typical response times to various cities from our strategically placed office locations.



CLEANUP GALLERY



Industrial Cleaning

SPECIALIZED INDUSTRY TRAINING



Read More...

HELPFUL RESPONSE INFORMATION

Information to have ready when calling about an emergency spill

24 Hour Hazmat Response (866) H2O-SPILL

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Exhibit D

AGREEMENT FOR SUBCONTRACTING SERVICES

This Agreement for Subcontracting Services (the "Agreement") is made as of October 1, 2012 by and between Proimtu MMI, LLC (hereinafter "Proimtu") an Arizona Limited Liability Company with a place of business at 4600 East Washington Street, suites 304 and 305, Phoenix, AZ 85034 and I120 Environmental, Inc. a Nevada corporation, with a place of business at 2364 S. Airport Blvd., Chandler, AZ 85286 ("Subcontractor").

1. DEFINITIONS

- (a) "Project" means the services and Deliverables to be provided to Proimtu under a specific Statement of Work.
- (b) "Statement of Work" means an attachment to this Agreement which references this Agreement and defines, with respect to a specific Project, the services to be performed, Responsibilities, final or interim project completion dates or milestones, fees or rates, and which sets forth any modifications to this Agreement. A Statement of Work signed by both parties shall be incorporated in and made a part of this Agreement. In the event of a conflict between the Statement of Work and this Agreement, the terms of the Agreement shall prevail.
- (c) "Deliverables" means any and all items described in a Statement of Work that Subcontractor agrees to deliver to Proimtu or to Proimtu's client in performance of the services governed by such Statement of Work.

2. SERVICES

- 1/3
- (a) Subcontractor shall perform the services ("Work") and provide the Deliverables to Proimtu set forth in the Statement of Work.
- (b) Each of Proimtu and Subcontractor shall appoint a Project Manager who shall be responsible for coordinating its activities under a Statement of Work. Each party shall direct all inquiries, requests and reports concerning the services and Deliverables to the other party's Project Manager. Subcontractor shall submit written progress reports, by any means including email and SMS, and Proimtu shall submit written replies, in accordance with a schedule to be determined by the Project Managers.
- (c) Time is of the essence in the performance of Work and other obligations hereunder, and Subcontractor agrees to complete the Work by the milestones and

(b) Subject to Section 2 (c) above, payment for all Work performed by Subcontractor in connection with a Project shall be made by Proimtu to Subcontractor in accordance with the Payment Schedule in the applicable Statement of Work. All fees are due and payable within thirty (30) days after receipt of invoice. Reimbursable expenses will be billed to Proimtu incurred by Subcontractor and payable within thirty (30) days after receipt of invoice.

4. VARIATIONS

(a) Subcontractor will notify Proimtu in writing whenever it identifies the need to perform Work or provide a Deliverable additional to, or reduced, that is, any modification from those set forth in a Statement of Work (a "Variation"). Proimtu may notify Subcontractor in writing whenever Proimtu believes there is a need for a Variation.

(b) If Proimtu wishes Subcontractor to perform or deliver what is identified in a Variation provided by Subcontractor, Proimtu will so notify Subcontractor in writing. Subcontractor will provide an estimate of the cost and schedule impact of performing or delivering the Variation, which estimate will be provided within a mutually agreed time frame. Subcontractor shall not be obliged to take further action with respect to the Variation until Subcontractor and Proimtu execute an appropriate written amendment to the applicable Statement of Work. Conversely, any Variation which reduces the Work is subject price reduction and such price reduction shall be for the benefit of Proimtu and the exclusive remedy of Subcontractor whatever its expectations.

(c) If Proimtu fails to meet the Proimtu Responsibilities as defined in the Statement of Work, and such failure materially and adversely affects Subcontractor's costs or schedule or precludes further work by Subcontractor on the Project until the Proimtu Responsibilities are met, then Subcontractor will notify Proimtu in writing, and Subcontractor and Proimtu will promptly cooperate to make an appropriate written amendment to the applicable Statement of Work.

5. TERM OF AGREEMENT; TERMINATION

(a) This Agreement is effective upon execution for a term of one (1) year from the date first written above, or until the completion of all Projects described in Statements of Work executed hereunder, whichever period is longer. The parties may extend the term by mutual written agreement.

(b) This Agreement may be terminated by either party at any time upon thirty (30) days written notice to the other party; *provided, however*, any such termination will not excuse the nonperformance of either parties' obligations with respect to

Party" with respect to Confidential Information which that party receives from the other. The Receiving Party shall employ best efforts to maintain the secrecy and confidentiality of all Confidential Information. Such best efforts shall be superior to that degree of care which the Receiving Party normally exercises with regard to its own property that it maintains secret and confidential, but in any event no less than best efforts.

(c) The Confidential Information may be disclosed only for purposes of the joint activity with the Disclosing Party and only to the Receiving Party's employees with a need to know, and the Receiving Party shall assure that each such employee has previously been advised of the terms of this Agreement. The Receiving Party may disclose Confidential Information of the Disclosing Party to employees of a client with a need to know for purposes of the joint activity of the parties hereunder, only pursuant to a written confidentiality agreement of the Receiving Party and the client which (a) expressly identifies the Confidential Information of the Disclosing Party, (b) provides no less protection of the Confidential Information than the provisions of this Article, and (c) is, in all other respects, reasonably acceptable to the Disclosing Party. The Receiving Party shall not disclose under any circumstances Confidential Information of the Disclosing Party to an employee or contractor or subcontractor or agent of the Receiving Party who has on any occasion been a party to or been exposed to any type of business relationship whatsoever, including employment, with any competitors or potential competitors of the Disclosing Party without first obtaining the written permission of the Disclosing Party. The foregoing notwithstanding, Proimtu shall have the right to disclose requested information of Subcontractor to Proimtu's client or potential client, to the extent Proimtu reasonably determines that such disclosure is appropriate in the course of its negotiations with its client. In such event, Proimtu shall disclose information of Subcontractor only to the extent necessary for the purposes of negotiation.

(d) The disclosure of Confidential Information shall not be construed to grant to the Receiving Party any ownership or other proprietary interest in such information. The Receiving Party agrees that it does not acquire any title, ownership, or other intellectual property right or license by virtue of such disclosure.

(e) Confidential Information shall not include any information disclosed hereunder which: (a) was rightfully in the Receiving Party's possession before receipt from the Disclosing Party other than through prior disclosure by the Disclosing Party; or (b) is or becomes a matter of general public knowledge through no breach of this Agreement; or (c) is rightfully received by the Receiving Party without an obligation of confidentiality and from a third party who did not receive it directly or indirectly from the Disclosing Party; or (d) is independently

8. INTELLECTUAL PROPERTY INDEMNITY

(a) Proimtu will notify Subcontractor, in writing, of any claim, action or proceeding ("Infringement Claim") against Proimtu or Proimtu's client that any Deliverable or other work product produced by Subcontractor for Proimtu, or the use thereof, infringes a patent, trademark, copyright or other proprietary right of a third party or misappropriates a trade secret of a third party.

(b) Upon being notified of any Infringement Claim brought against Proimtu or Proimtu's client based on such a claim, Subcontractor, at its sole cost, shall indemnify and defend Proimtu and Proimtu's client in said action, perform any negotiations for settlement or compromise of the action, and pay any and all settlements reached and/or costs and damages awarded in any such action, together with reasonable attorney's fees; *provided, however*, that to the extent that any action is based upon a claim that material furnished to Subcontractor by Proimtu or Proimtu's client, or the use thereof, infringes a patent, trademark, copyright, or other proprietary right of a third party, or misappropriates a trade secret of a third party, Proimtu, at its sole cost, shall indemnify and defend Subcontractor in such action, perform any negotiations for settlement or compromise of the action, and pay any and all settlements reached and/or costs and damages awarded in the action, together with reasonable attorney's fees.

(c) In the event of an Infringement Claim Subcontractor will, with the consent of Proimtu: (a) obtain the rights to use the infringing material; (b) modify the Deliverables so as to render them non-infringing and functionally equivalent; or (c) provide functionally equivalent substitute Deliverables; *provided, however*, that if none of the other options set forth in this paragraph can reasonably be achieved, Subcontractor may, in its sole discretion, elect to refund to Proimtu all fees paid to Subcontractor under the applicable Statement of Work in full satisfaction of Subcontractor's obligations under the Statement of Work. Any remedy under this paragraph shall be undertaken at the expense of the party that furnished the infringing material.

9. WARRANTIES

(a) Proimtu warrants that Subcontractor's use of any and all materials furnished by Proimtu hereunder will not violate or conflict with any U.S. intellectual property rights of any third persons including, but not limited to, copyrights, patent and trademarks. If Subcontractor performs code renovation hereunder, Proimtu warrants that it is authorized to permit Subcontractor's use of all relevant code for purposes of such renovation.

(b) Subcontractor warrants that:

(b) Except as otherwise provided in Sections 6, 7, 8 and 9 and any claim arising thereunder, Subcontractor's liability hereunder, regardless of the form of action, shall not exceed the total amount paid for services under this Agreement. Subcontractor's liability shall not be so limited with respect to injuries to persons or damage to tangible property arising out of the negligence or willful misconduct of Subcontractor or its employees.

(c) Neither party's liability shall be limited by this Section with respect to claims arising from breach of the confidentiality or warranty obligations of this Agreement or arising from such party's infringement or misappropriation of the other party's (or Proimtu's client's) intellectual property rights.

11. INSURANCE. Subcontractor shall carry and maintain in force at all times relevant hereto insurance of the types and minimum coverage amounts as follows and shall provide Proimtu with evidence of same upon request:

(a) Workers' Compensation and Employer's Liability Insurance providing for payment of benefits to and for the account of employees employed in connection with the work covered by this Agreement as required by the statutes of the state where the work is being performed.

(b) Commercial General Liability Insurance with minimum limits of \$5 million combined bodily injury and property damage per occurrence and aggregate.

(c) Business Automobile Liability Insurance with minimum limits of \$2 million combined single limit bodily injury and property damage per occurrence.

12. SUBCONTRACTOR PERSONNEL. Subcontractor specifically acknowledges and agrees that Proimtu may extend offers of employment to Subcontractor personnel and that this opportunity is part of the consideration for entering into this Agreement. Subcontractor personnel who provide services to Proimtu under this Agreement may perform similar services for others during the term of this Agreement, with the exception of competitors of Proimtu. Subcontractor will make reasonable efforts to honor specific requests of Proimtu regarding assignment of Subcontractor personnel, but Subcontractor reserves the right to make and change all such assignments, provided that Proimtu shall retain the right to reject the specific personnel assigned to Projects.

13. INDEPENDENT CONTRACTORS. Subcontractor and Proimtu shall at all times be independent parties. Neither party is an employee, a joint venturer, agent, or partner of the other, neither party is authorized to assume or create any obligations or liabilities, express or implied, on behalf of or in the name

Agreement will be binding unless it is in writing and signed by an authorized representative of each party.

(g) **Notice.** All notices will be given in writing and will be sent by prepaid certified mail with return receipt requested or transmitted by facsimile (if confirmed by such writing) to the address or facsimile telephone number for the parties indicated beneath the signature below. Either party may change its mailing address or facsimile telephone number by written notice to the other party. The parties may communicate via electronic mail regarding the Statement(s) of Work, Project(s) and Deliverable(s), *however*, all formal notice must be in writing and sent to the other party as described in this Section.

(h) **Reseller Agreement.** In the event that this Agreement or any Statement of Work hereunder includes the sale by Subcontractor to Proimtu of any product manufactured or supplied by a third party pursuant to a reseller agreement, all warranties, limitations and exclusions set forth in the reseller agreement shall pass through to Proimtu.

(i) **Arbitration.** If there is any disagreement that cannot be resolved between the parties arising out of or relating to this Agreement (other than a dispute concerning the ownership of any copyright or other intellectual property right), any such dispute will be settled by binding arbitration in the County where the Works in dispute are being performed. As the exclusive means of resolving through adversarial dispute resolution any disputes arising out of this Agreement, a party may demand that any such dispute be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and each party hereby consents to any such disputes being so resolved. Judgment on the award rendered in any such arbitration may be entered in any court having jurisdiction. The prevailing party in any dispute will be entitled to receive from the other party its reasonable attorneys' fees and costs.

(j) **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State where the arbitration takes place.

(k) **Survival.** The provisions of Sections 3, 6, 7, 8, 9, 10, 11 and 14 shall survive any expiration, cancellation or termination of this Agreement.

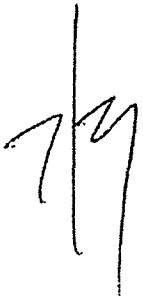
(l) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be considered an original hereof but which together shall constitute one agreement.

(m) **Joint Drafting and Neutral Construction.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the

Appendix A

DOCUMENTS REQUIRED AND ATTACHED TO THIS
AGREEMENT:

1. Certificates of Liability Insurance
2. Certificates of Workman's Compensation Insurance
3. Certificates of Commercial Auto Insurance
4. Federal Employer ID number
5. Copy of the Arizona Contractor's license





**STATEMENT OF WORK NO. 1
UNDER THE
MASTER AGREEMENT
FOR SUBCONTRACTING SERVICES DATED OCTOBER 1, 2012**

THIS STATEMENT OF WORK (the "SOW"), is entered into by and among:

Services performed for:
Proimtu MM, LLC
4600 E. Washington Street
Phoenix AZ 85034

Services performed by:
H2O
2364 S. Airport Blvd
Chandler AZ 85286.

PURPOSE

The parties have previously entered into that certain Master Agreement For Subcontracting Services Dated October 1, 2012 (the "Agreement"). The parties now desire to add this SOW to the Agreement to set forth terms and conditions specific to the Work and Deliverables being done. The terms and conditions of the Agreement are incorporated herein by reference. To the extent the terms and conditions of this SOW conflict with the Agreement, this SOW will govern with respect to the Work and Deliverables specified herein only. Capitalized terms used herein, but not defined in this SOW will have the meanings set forth in the Agreement.

Effective date – on the latter day of execution

Period of performance: from the Effective Date two (2) months hence unless earlier terminated or extended

Project: Solana (Gila Bend) thermo solar plant in Arizona including the services and Deliverables to be provided to Proimtu under this Statement of Work

Price: \$20,000 fixed amount for 2 months (\$2,500.00/week) or to be pro-rated in the event that this SOW is terminated earlier. In addition Proimtu shall pay the specified labor rates for Deliverables.

Project Manager for Proimtu: Miguel Fernandez

Project Manager for Subcontractor: John Bradley

Deliverables: Subcontractor personnel – estimated at four (4) at the following labor rates and number of hours of work.

Each working day is going to be divided:
 Two (2) employees x 8 hours x \$17.50 = \$280.00
 (22 days x \$280.00 = \$6,160.00)
 Two (2) employees x 2 hours \$ 20.27 = \$81.08
 (22 days x \$81.08 = \$1,783.76)
 Two (2) employees x 6 hours x 17.50 = \$210.00
 (22 days x \$280.00 = \$4,620.00)
 For a total monthly estimated cost at \$12,563.76.

Provided that Proimtu shall retain the right to reject specific personnel assigned to the Project and have them replaced by other employees at Proimtu's discretion.

Terms of Payment: fixed and variable costs paid upon signature of SOW \$22,563.76

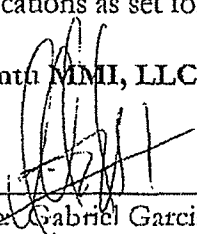
Work: Testing solar field loops (CCP loops) on the Solana (Gila Bend) thermo solar plant in Arizona with Proimtu proprietary technology and processes.

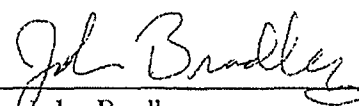
Proimtu Responsibilities: To monitor the Works so that they are performed in accordance with client specifications as set forth in the Abener/Teyma Contract dated August 2, 2012.

Subcontractor Responsibilities: To have in place the insurances and certifications as set forth in Appendix A to the Agreement.

Proimtu MMI, LLC

Subcontractor H2O Environmental, Inc.

By: 
 Name: Gabriel Garcia
 Title: Chief Executive Manager

By: 
 Name: John Bradley
 Title: CEO

Date: 10/10/2012

Date: 10-10-12

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

3 A.M. FILED 3:20 P.M.

4 FEB 12 2016

5 CHRISTOPHER D. RICH, Clerk
By KARI MAXWELL
DEPUTY

6 H2O ENVIRONMENTAL, INC., a
Nevada company,

7 Plaintiff,

8 vs.

9 PROIMTU MMI, LLC, a Nevada
10 company,

11 Defendant.
12

Case No. CVOC 1505838

MEMORANDUM DECISION
AND ORDER

13 **BACKGROUND**

14 This is an action for breach of contract and unjust enrichment relating to the employment of
15 construction laborers at a solar-panel plant in Nevada.

16 On August 21, 2015, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction,
17 along with a Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss
18 for Lack of Personal Jurisdiction. Plaintiff's Opposition to Defendant Proimtu's Motion to Dismiss
19 was filed on November 13, 2015, along with the Affidavit of Edward Savre in Support of Plaintiff's
20 Opposition to Defendant Proimtu's Motion to Dismiss. Defendant's Reply in Support of Its Motion
21 to Dismiss for Lack of Personal Jurisdiction was filed on November 20, 2015. On November 24,
22 2015, Defendant filed the Affidavit of Gabriel Gonzalez in Support of Defendant's Reply in
Support of Its Motion to Dismiss for Lack of Personal Jurisdiction.

23 Hearing on Defendant's motion to dismiss was held on February 1, 2016, at which time the
24 Court took the matter under advisement.
25
26

DISCUSSION

Defendant, a Nevada company, seeks dismissal of this action pursuant to I.R.C.P. 12(b)(2) for lack of personal jurisdiction. The Court's exercise of personal jurisdiction over a non-resident defendant "involves satisfying two criteria." *Blimka v. My Web Wholesaler, LLC*, 143 Idaho 723, 726, 152 P.3d 594, 597 (2007) (citations omitted). First, the Court "must determine that the non-resident defendant's actions fall within the scope of Idaho's long-arm statute," I.C. § 5-514. *Id.*, citing *McAnally v. Bonjac, Inc.*, 137 Idaho 488, 491, 50 P.3d 983, 986 (2002). Second, the Court "must determine that exercising jurisdiction over the non-resident defendant comports with the constitutional standards of the Due Process Clause of the U.S. Constitution." *Blimka*, 143 Idaho at 726, 152 P.3d at 597, citing *McAnally*, 137 Idaho at 491, 50 P.3d at 986. The question of the existence of personal jurisdiction over an out-of-state defendant is one of law. *Blimka*, 143 Idaho at 726, 152 P.3d at 597 (citations omitted). Evidence presented in connection with a motion to dismiss challenging jurisdiction "must be viewed in the light most favorable to the non-moving party, and the non-moving party is entitled to all reasonable inferences which can be drawn from the facts presented." *Western States Equip. Co. v. American AMEX, Inc.*, 125 Idaho 155, 157, 868 P.2d 483, 485 (1994), citing *Intermountain Bus. Forms, Inc. v. Shepard Bus. Forms Co.*, 96 Idaho 538, 540, 531 P.2d 1183, 1185 (1975). Idaho's long-arm statute should be liberally construed. *Knutsen v. Cloud*, 142 Idaho 148, 151, 124 P.3d 1024, 1027 (2005) (citations omitted).

Idaho's long-arm statute provides that certain acts will subject a person or business to the jurisdiction of the courts of Idaho, including:

The transaction of any business within this state which is hereby defined as the doing of any act for the purpose of realizing pecuniary benefit or accomplishing or attempting to accomplish, transact or enhance the business purpose or objective or any part thereof of such person, firm, company, association or corporation.

I.C. § 5-514(a). In the case at bar, Plaintiff is a Nevada company registered to do business in the state of Idaho, and is headquartered in Boise, Idaho. See Affidavit of Edward Savre in Support of Plaintiff's Opposition to Defendant Proimtu's Motion to Dismiss (hereinafter Savre Affidavit) at ¶ 3. Defendant is a Nevada limited liability company. See Affidavit of Gabriel Gonzalez in Support of Defendant's Reply in Support of Its Motion to Dismiss for Lack of Personal Jurisdiction (hereinafter Gonzalez Affidavit) at ¶ 3. On or about November of 2012, Defendant commissioned Plaintiff to hire and employ Nevada-based construction laborers for a solar project in Tonopah, Nevada. See Gonzalez Affidavit at ¶¶ 4-5; Savre Affidavit at ¶ 4. Plaintiff agreed to manage the

1 hiring, compensation, and Davis Bacon wage reporting of the laborers on behalf of Defendant. See
2 Savre Affidavit at ¶ 4. Plaintiff asserts that an oral contract was made through the exchange of
3 phone calls and emails between Defendant and Plaintiff's CFO and CEO, who were located in
4 Boise, Idaho. See Savre Affidavit at ¶ 5. Defendant asserts that its first contact with Plaintiff took
5 place in Arizona, and that the parties entered into a written contract for an Arizona project on or
6 about October of 2012. See Gonzalez Affidavit at ¶¶ 6, 9. Gabriel Gonzalez, Defendant's Chief
7 Operating Officer, asserts that based upon the information set forth in that contract, he believed
8 Plaintiff was a Nevada company doing business in Arizona. See Gonzalez Affidavit at ¶ 9. On
9 October 8, 2012, Mr. Gonzalez emailed John Bradley, Plaintiff's CEO, to request certain "company
10 information" regarding Plaintiff. See Savre Affidavit, Exhibit B. In response to this request,
11 Edward Savre, Plaintiff's CFO, emailed Defendant a copy of Plaintiff's W-9, which lists Plaintiff's
12 address as 6679 South Supply Way in Boise, Idaho. See Savre Affidavit at ¶ 7 and Exhibit B.
13 Mr. Savre also emailed Defendant regarding Plaintiff's bank information, listing Plaintiff's bank as
14 Wells Fargo Bank in Boise, Idaho. See Savre Affidavit, Exhibit C.

15 Plaintiff asserts that all of the services it provided to Defendant for the Tonapah project
16 were provided from Boise, Idaho. See Savre Affidavit at ¶ 9. Those services included: conducting
17 pre-employment screening of potential employees selected by Defendant; hiring the Tonapah
18 project employees; providing the employees with weekly paychecks via direct deposit from
19 Plaintiff's Boise, Idaho, bank; and completing weekly Davis Bacon wage reporting. See Savre
20 Affidavit at ¶¶ 10-13. Plaintiff asserts that throughout the duration of the parties' contract,
21 Defendant emailed Mr. Savre instructions regarding payment for the Tonapah project employees'
22 weekly hours. See Savre Affidavit at ¶ 14. Plaintiff further asserts that throughout the duration of
23 the parties' contract, Defendant mailed checks to Boise, Idaho, for weekly reimbursement of
24 Plaintiff's Tonapah project costs, and that Defendant paid all of Plaintiff's invoices for the Tonapah
25 project until approximately June of 2013. See Savre Affidavit at ¶¶ 15-16 and Exhibit E.
26 In approximately May of 2013,¹ the Department of Labor investigated Defendant, determined that
some of the Tonapah employees were misclassified, and ultimately, in 2014, demanded that
Plaintiff pay \$28,832.21 in additional employer taxes. See Savre Affidavit at ¶¶ 17, 19. Plaintiff
sent Defendant an invoice for the costs of the additional employment taxes. See Savre Affidavit at

¹ The Court notes that the allegations in the Complaint indicate that this investigation began in 2014. See Complaint at ¶ 14.

¶ 23 and Exhibit I. Plaintiff asserts that Defendant has refused to pay that invoice. See Savre Affidavit at ¶ 24.

As noted above, I.C. § 5-514(a) provides that the “transaction of any business within this state” will submit a person or company to the jurisdiction of the courts of the state. Transaction of business is defined, in part, as doing “any act for the purpose of realizing pecuniary benefit.” I.C. § 5-514(a). The Idaho Supreme Court has noted that the language of I.C. § 5-514(a) is broad. See *Southern Idaho Pipe & Steel Co. v. Cal-Cut Pipe & Supply, Inc.*, 98 Idaho 495, 497, 567 P.2d 1246, 1248 (1977). The record in this matter indicates that Defendant made at least some phone calls to Plaintiff’s CFO and CEO in Idaho. See Gonzalez Affidavit at ¶¶ 7, 10; Savre Affidavit at ¶ 5. The Tonapah project employees were paid via direct deposit from Plaintiff’s bank in Idaho, and Defendant reimbursed Plaintiff for the Tonapah project costs by mailing checks to Plaintiff in Idaho. As noted above, I.C. § 5-514 should be liberally construed. See *Knutsen*, 142 Idaho at 151, 124 P.3d at 1027; see also *Profits Plus Capital Mgmt., LLC v. Podesta*, 156 Idaho 873, 882, 332 P.3d 785, 794 (2014) (citation omitted). Viewing the facts in the light most favorable to Plaintiff, and drawing all reasonable inferences from those facts, the Court concludes that Defendant transacted business within the state of Idaho for purposes of application of Idaho’s long-arm statute.

Next, the Court must next consider whether the exercise of personal jurisdiction would violate the “minimum contacts” requirement of the Due Process Clause of the Fourteenth Amendment. See *Western States*, 125 Idaho at 158, 868 P.2d at 486, citing *Saint Alphonsus v. State of Washington*, 123 Idaho 739, 742-44, 852 P.2d 491, 494-46 (1993). The concept of “minimum contacts” involves “some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Western States*, 125 Idaho at 158, 868 P.2d at 486, citing *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed. 2d 1283, 1298 (1958). The contacts must be such that the defendant “purposefully directed its activity to Idaho,” and therefore could “reasonably anticipate being haled into court” in Idaho. *Western States*, 125 Idaho at 158, 868 P.2d at 486, quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490, 501 (1980). For specific personal jurisdiction, the ensuing litigation must arise out of or relate to the contacts. Finally, whether there have been sufficient contacts must be determined on a case by case basis. See *Western States*, 125 Idaho at 158, 868 P.2d at 486 (citations omitted).

1 As noted above, Plaintiff is a Nevada company headquartered in Boise, Idaho. Plaintiff
2 asserts that Defendant directed its communication and contacts towards Idaho, and negotiated and
3 entered into an oral contract with Plaintiff's headquarters in Boise. See Plaintiff's Opposition to
4 Defendant Proimtu's Motion to Dismiss at 8. Plaintiff further asserts that all of the services it
5 provided to Defendant pursuant to the contract were provided from Boise, Idaho. See Savre
6 Affidavit at ¶ 9. The Idaho Supreme Court has stated that the location of a plaintiff's principal
7 place of business is not significant in determining whether an Idaho court may exercise personal
8 jurisdiction over an out-of-state defendant:

9 The fact that HFI's principal place of business was in Idaho has no significance in
10 determining whether Idaho may exercise personal jurisdiction over Johnson. It is Johnson's
11 activities, not HFI's location that must be considered.

12 *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 81, 803 P.2d 978, 987 (1990). Plaintiff focuses
13 on the activities it performed in Boise, Idaho, as well as on the fact that Defendant mailed
14 reimbursement checks to Plaintiff's Boise, Idaho, address. See Savre Affidavit at ¶¶ 10-13, 15.
15 However, the "unilateral activity" of a plaintiff cannot satisfy the requirement of contact with the
16 forum state. See *Southern Idaho Pipe & Steel Co.*, 98 Idaho at 500, 567 P.2d at 1251. Plaintiff's
17 requirement that the reimbursement checks be mailed to Boise, Idaho, does not establish an act by
18 which Defendant purposefully availed itself of "the privilege of conducting activities" in Idaho. See
19 *id.*, quoting *Hanson*, 357 U.S. at 253, 78 S. Ct. at 1240. The Court notes that the final invoice
20 which Plaintiff alleges Defendant failed to pay directs Defendant to mail payment not to Boise,
21 Idaho, but to Bettendorf, Iowa. See Savre Affidavit, Exhibit I. Again, it is not Plaintiff's unilateral
22 choices but Defendant's activities which must be considered in determining whether Defendant has
23 established minimum contacts with Idaho.

24 The Idaho Supreme Court has held that the minimum contacts requirement was satisfied in
25 cases where a non-resident defendant deliberately reached out beyond its home state to negotiate
26 with an Idaho company. See, e.g., *Western States*, 125 Idaho at 158, 868 P.2d at 486; and *Beco Corp. v. Roberts & Sons Constr. Co., Inc.*, 114 Idaho 704, 708, 760 P.2d 1120, 1124 (1988),
overruled by *Houghland Farms*, 119 Idaho 72, 803 P.2d 978. In this case, however, Defendant did
not reach out to negotiate with an Idaho company, deliberately or otherwise. Rather, Defendant
negotiated with a Nevada company for services relating to a project in Nevada. Further, due
process involves a degree of foreseeability. As the Idaho Supreme Court noted in *Houghland*

1 *Farms*, the United States Supreme Court has focused on “the foreseeability . . . that the defendant’s
2 conduct and connection with the forum State are such that [the defendant] should reasonably
3 anticipate being haled into court there.” 119 Idaho at 80, 803 P.2d at 986, *quoting Burger King*
4 *Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183, 85 L. Ed. 2d 528, 542 (1985).
5 Specifically, the “Due Process Clause requires that a non-resident defendant have ‘fair warning that
6 a particular activity may subject [them] to the jurisdiction of a foreign sovereign.’” *Saint*
7 *Alphonsus*, 123 Idaho at 743, 852 P.2d at 495, *quoting Burger King*, 471 U.S. at 472, 105 S. Ct. at
8 2182, 85 L. Ed. 2d 528. Plaintiff’s website indicates it is a Nevada company with “bases of
9 operation” in Boise, Las Vegas, Reno, Phoenix, and Salt Lake City. See Gonzales Affidavit,
10 Exhibits B and C. This information would not indicate to a Nevada defendant that doing business
11 with Plaintiff would subject the defendant to the jurisdiction of Idaho courts, nor would it even
12 indicate that Plaintiff is “headquartered” in Idaho. Plaintiff points to the numerous emails
13 Defendant sent “to Boise, Idaho,” as evidence that Defendant should have reasonably anticipated
14 being haled into an Idaho court. See Plaintiff’s Opposition to Defendant Proimtu’s Motion to
Dismiss at 8-9; Savre Affidavit at ¶ 14. However, the Court cannot conclude that an email address
such as “esavre@h2oenvironmental.net” would give fair warning of the physical location of the
person receiving an email communication at that email address. See Savre Affidavit, Exhibit A.

15 Having reviewed the record in the light most favorable to Plaintiff, the Court concludes that
16 the requisite minimum contacts with Idaho have not been established. Again, Defendant entered
17 into a contract with a Nevada company for services related to a project in Nevada. Although
18 Defendant had communications with persons in Idaho during the course of the contract and mailed
19 reimbursement checks to Boise, Idaho, at Plaintiff’s direction, the Court cannot conclude that
20 Defendant purposefully availed itself “of the privilege of conducting activities” within Idaho, “thus
21 invoking the benefits and protections of its laws.” *Western States*, 125 Idaho at 158, 868 P.2d at
22 486, *citing Hanson*, 357 U.S. at 253, 78 S. Ct. at 1240, 2 L.Ed. 2d at 1298. Having found a lack of
23 minimum contacts, it is unnecessary for the Court to address whether the exercise of jurisdiction
24 over Defendant “would violate traditional notions of fair play and justice.” See *Saint Alphonsus*,
123 Idaho at 745, 852 P.2d at 497. For these reasons, Defendant’s motion to dismiss pursuant to
I.R.C.P. 12(b)(2) is granted.

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CONCLUSION

For the reasons set forth above, Defendant's Motion to Dismiss for Lack of Personal Jurisdiction is granted. Defendant is hereby directed to prepare a form of judgment consistent with this opinion.

IT IS SO ORDERED.

Dated this 12th day of February, 2016.

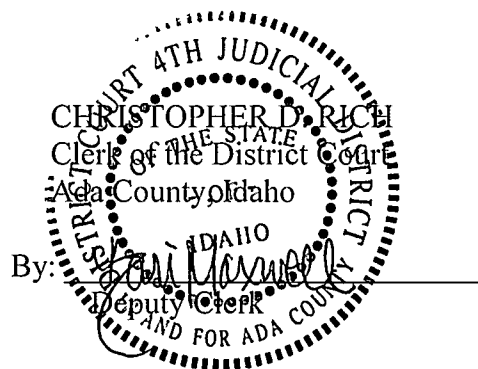

TIMOTHY HANSEN
District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 16th day of February, 2016, one copy of the ORDER as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

FENNEMORE CRAIG PC
BRENOCH R. WIRTHLIN
SUITE 1400 BANK OF AMERICA PLAZA
300 SOUTH FOURTH STREET
LAS VEGAS NV 89101

VAUGHN FISHER
ALLISON BLACKMAN
FISHER RAINEY HUDSON
950 W BANNOCK STREET – SUITE 630
BOISE IDAHO 83702



MAR 30 2016

CHRISTOPHER D. RICH, Clerk
By MIREN OLSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H2O ENVIRONMENTAL, INC., an
Idaho Company,

Plaintiff,

vs.

PROIMTU MMI, LLC, a Nevada
company,

Defendant.

Case No.: CV OC 1505838

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS: the above-captioned *case* is dismissed.

DATED this 30th day of March, 2016.



TIMOTHY HANSEN
District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 31 day of March, 2016, one copy of the JUDGMENT as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

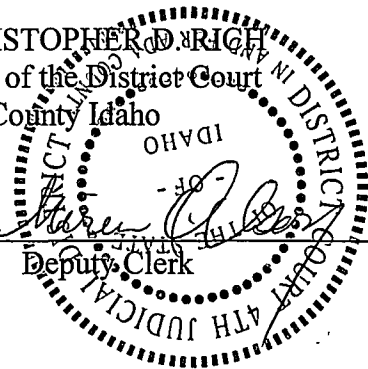
FENNEMORE CRAIG PC
BRENOCH R. WIRTHLIN
SUITE 1400 BANK OF AMERICA PLAZA
300 SOUTH FOURTH STREET
LAS VEGAS NV 89101

VAUGHN FISHER
ALLISON BLACKMAN
FISHER RAINEY HUDSON
950 W. BANNOCK STREET -SUITE 630
BOISE IDAHO 83702

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County Idaho

By: _____

Deputy Clerk



RECEIVED



ORIGINAL

NO. _____
A.M. _____ FILED P.M. _____

APR 13 2016

Ada County Clerk

FENNELMORE CRAIG, P.C.

Brenoch R. Wirthlin

Idaho Bar No. 8044

Suite 1400 Bank of America Plaza

300 South Fourth Street

Las Vegas, NV 89101

Telephone: (702) 692-8000

Idaho State Bar No. 8044

Email: bwirthli@fclaw.com

Attorneys for Proimtu MMI, LLC

APR 13 2016

CHRISTOPHER D. RICH, Clerk
By ALESIA BUTTS
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF ADA

H2O ENVIRONMENTAL, INC., a Nevada
company,

Plaintiff,

v.

PROIMTU MMI, LLC, a Nevada limited-
liability company,

Defendant.

No. CV OC 1505838

STATEMENT OF COSTS

TO: THE CLERK OF COURT AND THE PARTIES AGAINST WHOM COSTS ARE CLAIMED:

The undersigned is the attorney of record for Defendant Proimtu MMI, LLC, and has personal knowledge that costs, as defined in Idaho Code § 1-120(1), have been incurred and expended by the Proimtu in this action.

Pursuant to Idaho Rule of Civil Procedure 54(g), Idaho Code § 1-120(1), and the Court's February 12, 2016 Memorandum Decision, Proimtu claims these costs against Plaintiff H2O

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STATEMENT OF COSTS - 1

11515366.1/034514.0013

000160

Environmental, Inc.:

Date	Timekeeper	Narrative	Hours	Amount
4/14/2015	John F. Daniels	[REDACTED]	0.30	\$153.00
4/14/2015	Chris Byrd	Review complaint from Idaho; conference with [REDACTED] [REDACTED]; email to [REDACTED]	0.30	\$138.00
5/1/2015	Chris Byrd	Review [REDACTED] [REDACTED]; email to [REDACTED] concerning the [REDACTED]	0.60	\$276.00
5/1/2015	John F. Daniels	[REDACTED]	0.80	\$408.00
5/5/2015	Emily Ward	Strategize [REDACTED] [REDACTED] with [REDACTED]	0.10	\$23.50
5/5/2015	John F. Daniels	[REDACTED]	0.40	\$204.00
5/8/2015	Chris Byrd	Review options for [REDACTED] with E. Ward and [REDACTED]	0.50	\$230.00

Date	Timekeeper	Narrative	Hours	Amount
6/10/2015	Chris Byrd	Review motion regarding jurisdiction; review law applicable to [REDACTED]; email comments to [REDACTED]	1.10	\$506.00
8/18/2015	Chris Byrd	Review Idaho matter with [REDACTED]; email to [REDACTED] to obtain [REDACTED]	0.50	\$230.00
8/19/2015	Emily Ward	Coordinate with [REDACTED], and [REDACTED] on motion to dismiss for Idaho litigation; research [REDACTED]; draft notice of special appearance.	0.50	\$117.50
8/19/2015	Chris Byrd	Review and revise motion for Idaho lawsuit; review [REDACTED]	1.00	\$460.00
8/20/2015	Emily Ward	Email to [REDACTED] regarding motion to dismiss and notice of special appearance for Idaho litigation; revise and supplement motion to dismiss; coordinate filing of motion to comply with Idaho Rules of Civil Procedure.	0.50	\$117.50
8/20/2015	Chris Byrd	Review motion to dismiss; emails to [REDACTED] concerning filing and special appearance.	0.60	\$276.00
8/21/2015	Chris Byrd	Email to [REDACTED] concerning Idaho filing; begin review of motion to dismiss.	0.60	\$276.00
8/21/2015	Emily Ward	Email to [REDACTED] confirming that Idaho court and opposing counsel for H2O received motion to dismiss.	0.10	\$23.50
8/21/2015		Initial Appearance Filing Fee		\$136.00
8/26/2015	Emily Ward	Draft email to [REDACTED] confirming Idaho court calendar; draft additional email to [REDACTED] detailing [REDACTED]	1.40	\$329.00

Date	Timekeeper	Narrative	Hours	Amount
9/24/2015	Emily Ward	Research [REDACTED]; call court [REDACTED]; email to [REDACTED] conveying information.	0.30	\$70.50
10/6/2015	Emily Ward	Email to [REDACTED] outlining relevant procedural rules in Idaho for hearing on Proimtu's motion to dismiss.	0.20	\$47.00
10/6/2015	Brenoch Wirthlin	Correspondence with Idaho court clerk regarding upcoming hearing and prepare for same.	0.40	\$126.00
10/6/2015	Chris Byrd	Review and respond to various emails about [REDACTED].	0.20	\$92.00
10/27/2015	Emily Ward	Call with [REDACTED] to discuss 10/27 status hearing and upcoming 10/29 status hearing; email to B [REDACTED] describing [REDACTED].	0.60	\$141.00
11/3/2015	Brenoch Wirthlin	Correspondence with [REDACTED] regarding [REDACTED].	0.20	\$63.00
11/6/2015	Brenoch Wirthlin	Receive and review pleadings from opposing party. Review emails from [REDACTED]. Attend telephonic scheduling conference with court and review documentation as necessary regarding upcoming evidentiary hearing.	0.90	\$283.50
11/6/2015	Emily Ward	Call to [REDACTED] regarding [REDACTED].	0.20	\$47.00
11/9/2015	Emily Ward	Research whether [REDACTED].	0.20	\$47.00
11/10/2015	Brenoch Wirthlin	Correspondence regarding [REDACTED]. Work on Idaho jurisdictional issues and hearing regarding same.	0.60	\$189.00

Date	Timekeeper	Narrative	Hours	Amount
11/13/2015	Emily Ward	Call with [REDACTED] to discuss [REDACTED]; review emails from H2O regarding [REDACTED].	0.20	\$47.00
11/13/2015	Brenoch Wirthlin	Email correspondence and phone conference with [REDACTED]. Review pleadings and prior correspondence regarding status.	0.90	\$283.50
11/16/2015	Emily Ward	Consider arguments for and against [REDACTED]; consider settlement offer; coordinate filing reply brief; review and analyze response brief and corresponding affidavit of Edward Savre.	1.00	\$235.00
11/17/2015	Chris Byrd	Review opposition to motion to dismiss.	0.30	\$138.00
11/17/2015	Brenoch Wirthlin	Work on reply and accompanying exhibits.	0.40	\$126.00
11/18/2015	Emily Ward	Call with [REDACTED] to discuss [REDACTED]; strategize [REDACTED]; consider [REDACTED]; strategize [REDACTED].	0.60	\$141.00
11/18/2015	Brenoch Wirthlin	Email [REDACTED]. Work on issues related to [REDACTED]. Review complaint.	0.90	\$283.50
11/19/2015	Brenoch Wirthlin	Work on declaration in support of reply in support of motion to dismiss Idaho action. Correspondence with [REDACTED]. Correspondence with opposing counsel regarding [REDACTED].	1.70	\$535.50

Date	Timekeeper	Narrative	Hours	Amount
11/19/2015	Emily Ward	Draft reply brief in Idaho matter; revise and supplement affidavit of [REDACTED]	1.50	\$352.50
11/20/2015	Jessica Gale	Research [REDACTED]	0.50	\$120.00
11/20/2015	Emily Ward	Continue to draft factual background section and argument for reply brief in Idaho litigation; research [REDACTED]; research [REDACTED]; confirm filing requirements for Ada County Court in Idaho.	7.00 6.0	\$1,645.00 \$1410.00
11/20/2015	Brenoch Wirthlin	Call from [REDACTED]. Review and revise [REDACTED]. Review court order regarding filing and telephonic conference. Work on reply in support of motion to dismiss. Meet with [REDACTED]. Attend telephonic hearing with Judge and opposing counsel regarding status. Finalize and oversee filing and service of reply and affidavit.	3.90 2.90	\$1,228.50 \$913.50
1/27/2016	Emily Ward	Research local rules [REDACTED]; call court clerk's office to confirm research; email to B. Wirthlin relaying research.	0.30	\$81.00
1/28/2016	Brenoch Wirthlin	Research regarding notice. Review relevant orders. Prepare for upcoming hearing.	2.90	\$971.50
2/1/2016	Brenoch Wirthlin	Travel to Idaho to attend hearing on motion to dismiss complaint by H2O. Prepare for and argue for dismissal at hearing. Conference with opposing counsel regarding possible settlement brought up by opposing counsel.	9.20 6.20	\$3082.00 \$2077.00

Date	Timekeeper	Narrative	Hours	Amount
2/2/2016	Brenoch Wirthlin	Return from hearing in Boise, ID regarding motion to dismiss.	4.20	\$1407.00
		Correspondence with [REDACTED]	3.20	\$1072.00
2/19/2016	Brenoch Wirthlin	Receive order concerning Idaho action and [REDACTED]	0.20	\$67.00
2/24/2016	Emily Ward	[REDACTED]	1.20	\$324.00
2/26/2016	Emily Ward	[REDACTED]	2.00	\$540.00
3/1/2016	Emily Ward	[REDACTED]	0.50	-\$135.00
3/3/2016	Emily Ward	[REDACTED]	1.00	\$135.00
3/4/2016	Emily Ward	[REDACTED]	0.50	-\$135.00
Totals			60.1	\$16,395.00

A copy of this Statement of Costs was mailed to Plaintiff, c/o Vaugh Fisher, Esq. and Allison Blackman, Esq. at Fisher Rainey Hudson, 950 W. Bannock Street, Suite 630, Boise, Idaho 83702, on the date as set forth below.

Pursuant to Rule 80(i), Idaho Rules of Civil Procedure, I declare under penalty of perjury

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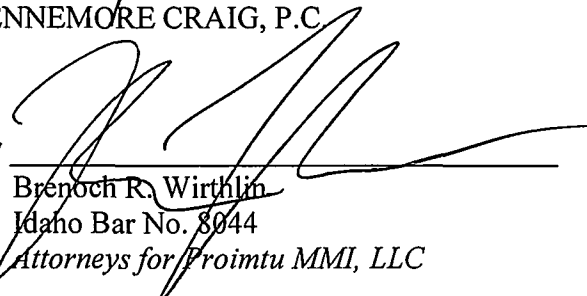
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that the foregoing is true and correct to the best of my knowledge, information and belief.

RESPECTFULLY SUBMITTED this 12 day of April, 2016.

FENNEMORE CRAIG, P.C.

By


Brenoch R. Wirthlin
Idaho Bar No. 8044
Attorneys for Proimtu MMI, LLC

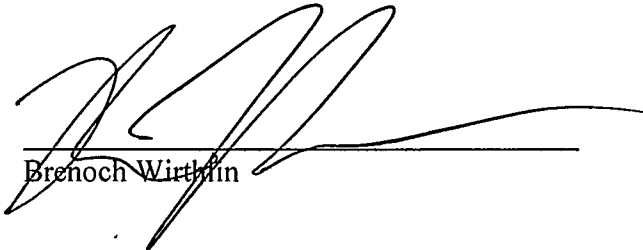
CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of April, 2016, I caused a copy of the foregoing **Statement of Costs** to be served upon the following, in the manner indicated below:

Vaughn Fisher
Allison Blackman
Fisher Rainey Hudson
950 W. Bannock Street, Suite 630
Boise, ID 83702

(X) Via U.S. Mail
() Via Overnight Mail
() Via Hand Delivery
() Via Facsimile

Attorneys for Plaintiff


Brenoch Wirthlin

NO. _____
A.M. _____ P.M. _____
FILED
APR 29 2016
CHRISTOPHER D. RICH, Clerk
By ALESIA BUTTS
DEPUTY

Vaughn Fisher, ISB No. 7624
Allison Blackman, ISB No. 8686
FISHER RAINEY HUDSON
950 W Bannock Street, Suite 630
Boise, ID 83702
vaughn@frhtriallawyers.com
allison@frhtriallawyers.com
Phone (208) 345 – 7000
Fax (208) 514 – 1900

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

H2O ENVIRONMENTAL, INC., an
Idaho Company,

Plaintiff/Appellant,

vs.

PROIMTU MMI, LLC, a Nevada
company,

Defendant/Respondent.

Case No.: CV OC 1505838

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, Proimtu MMI, LLC, AND THE PARTY'S ATTORNEYS Brenoch R. Wirthlin, Fennemore Craig, P.C., Suite 1400 Bank of America Plaza, 300 South Fourth Street, Las Vegas, NV 89101, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant H2O Environmental, Inc., appeals against the above named respondent to the Idaho Supreme Court from the Memorandum Decision and Order (entered on February 12, 2016) and the Judgment entered in the above entitled action on the day of March 30, 2016, Honorable Judge Timothy Hansen presiding.

ORIGINAL

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or order described in paragraph 1 above are appealable under and pursuant to Rule 11(a)(1) I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal:

a. The District Court erred in dismissing the above-entitled action for lack of personal jurisdiction against Defendant Proimtu MMI, LLC pursuant to Idaho's long arm-statute §5-514(a) and the 14th Amendment of the United States Constitution.

4. No order has been entered sealing any portion of the record.

5. No reporter's transcript is requested.

6. The appellant request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

a. 8/20/15 Defendant Proimtu MMI, LLC's Motion to Dismiss for Lack of Jurisdiction.

b. 8/20/15 Memorandum of Points and Authorities in Support of Defendant Proimtu MMI, LLC's Motion to Dismiss for Lack of Personal Jurisdiction.

c. 11/13/15 Plaintiff H2O Environmental, LLC's Opposition to Defendant Proimtu's Motion to Dismiss.

d. 11/13/15 Affidavit of Edward Savre in Support of Plaintiff's Opposition to Defendant Proimtu's Motion to Dismiss.

e. 11/20/15 Defendant Proimtu MMI, LLC's Reply in Support of Motion to Dismiss.

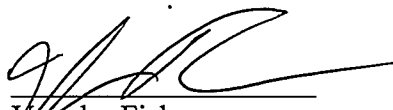
- f. 11/20/15 Affidavit of Gabriel Gonzalez in Support of Defendant's Reply in Support of Its Motion to Dismiss for Lack of Personal Jurisdiction.
- g. 02/12/16 Memorandum Decision and Order
- h. 03/30/16 Judgment
- i. 04/12/16 Statement of Costs

7. I certify:

- a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested—Not Applicable.
- b. That the clerk of the district court has been paid the estimated fee for the preparation of the reporter's transcript—Not Applicable.
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That the appellate filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 29 day of April, 2016.

FISHER RAINEY HUDSON



Vaughn Fisher
Attorney for Plaintiff

CERTIFICATE OF SERVICE

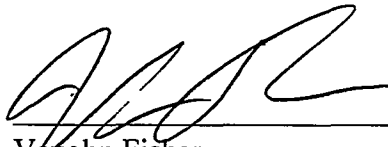
I HEREBY CERTIFY that on the 29 day of April, 2016, I caused to be served a copy of the foregoing **NOTICE OF APPEAL** on the following, in the manner indicated below:

Brenoch R. Wirthlin
Fennemore Craig, P.C.
Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
bwirthli@fclaw.com

() Via U.S. Mail
() Via Overnight Mail
() Via Hand Delivery
(☒) Via Fax (702) 692-8099

Attorneys for Defendant

FISHER RAINEY HUDSON

A handwritten signature in black ink, appearing to read 'Vaughn Fisher', is written over a horizontal line.

Vaughn Fisher

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H2O ENVIRONMENTAL INC., an Idaho
Company,

Plaintiff-Appellant,

vs.

PROIMTU MMI, LLC, a Nevada
Company,

Defendant-Respondent.

Supreme Court Case No. 44148

CERTIFICATE OF EXHIBITS

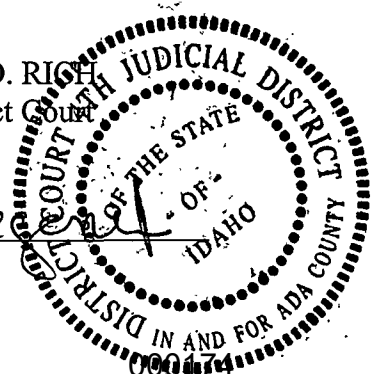
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 19th day of May, 2016.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. [Signature]
Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H2O ENVIRONMENTAL INC., an Idaho
Company,

Plaintiff-Appellant,

vs.

PROIMTU MMI, LLC, a Nevada
Company,

Defendant-Respondent.

Supreme Court Case No. 44148

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of
the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

VAUGHN FISHER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

BRENOCH R. WIRTHLIN

ATTORNEY FOR RESPONDENT

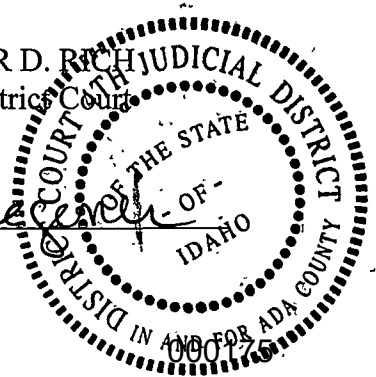
LAS VEGAS, NEVADA

Date of Service: MAY 19 2016

CHRISTOPHER D. RICH
Clerk of the District Court

By KW
Deputy Clerk

CERTIFICATE OF SERVICE



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H2O ENVIRONMENTAL INC., an Idaho
Company,

Plaintiff-Appellant,

vs.

PROIMTU MMI, LLC, a Nevada
Company,

Defendant-Respondent.

Supreme Court Case No. 44148

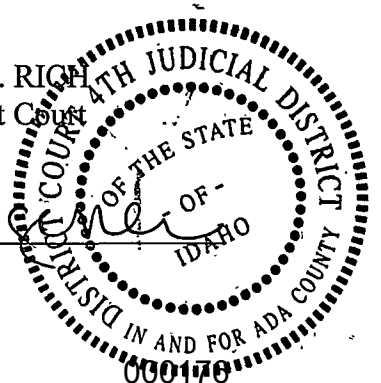
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 29th day of April, 2016.

CHRISTOPHER D. RICH
Clerk of the District Court

By KW Seeger
Deputy Clerk



CERTIFICATE TO RECORD